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THE
Practice
OF
MAGISTRATES' COURTS.

SECOND EDITION.

BY
THOMAS WILLIAM SAUNDERS, ESQ.,
(Of the Middle Temple, Barrister-at-Law),
RECORDER OF DARTMOUTH.

Law Times Office:
29, ESSEX STREET, STRAND, LONDON.

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THE
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LAW OF ENGLAND,

AS ESTABLISHED BY THE
RECENT STATUTES, ORDERS, RULES, &c.

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PREFACE

TO

THE SECOND EDITION.

IN presenting to the Public the Second Edition of this Work, the Author begs to express his sense of gratification at the general approbation bestowed upon his labours, as evinced by the rapid sale of the first issue.

In the present Edition he has endeavoured to secure a continuance of that approval, not only by the introduction of much new matter, but by the elimination of that which, during the last year or two, has been repealed or become inapplicable.

Since the publication of the former Edition two Statutes have passed of more than ordinary importance to Magistrates—one conferring upon them an entirely new jurisdiction, the other providing for the reservation of a Case for the Courts above upon their decisions upon summary proceedings; the first, “*The Divorce and Matrimonial Causes Act*” (20 & 21 Vict. c. 85); the second, “*An Act to improve the Administration of the Law so far as respects Summary Proceedings*”

PREFACE.

before Justices of the Peace" (20 & 21 Vict. c. 43); each of which is made the subject of a distinct Chapter.

In all other respects the Work has been revised so as to make it conform in all its details with the law at the present time.

T. W. S.

1, *Cloisters, Temple,*
May, 1858.

PREFACE

TO

THE FIRST EDITION.



THE following pages present, in a comprehensive and convenient shape, the entire general practice of the law as it obtains in the various courts in which the Magistrates of this country administer justice, as regulated by recent statutes.

That such a work must be of considerable service to those interested in the proceedings of these courts cannot be doubted, when it is remembered that in them is administered, not only the great bulk of the criminal law of this kingdom, but a large portion of the law which has for its object the arranging of the differences and the defining of the rights of individuals in their social, public, and corporate relationships.

Upon this subject much no doubt has already been accomplished; and when we turn to "Dickinson's Quarter Sessions Practice," and Mr. Oke's excellent "Magisterial Synopsis," it must be admitted that some branches of it have been most ably treated.

PREFACE.

No work, however, at present exists purporting to embody in a concise shape the *entire* practice of the Magistrates' Courts; none, in fact, which is exclusively devoted to the *practice* of these courts, as it is to be observed and followed by the Legal Practitioner,

In the Work now presented to the Public, the Author has endeavoured to embody the entire practice as it is necessary the Practitioner should understand it; his aim being to comprise in one portable Volume all the practical information which it is desirable the Practitioner should possess, in order conveniently and effectually to discharge their various duties.

It may be observed, that the publication of the Work has been delayed in order to incorporate the Statute, just passed, entitled "*An Act for diminishing Expenses and Delay in the Administration of Criminal Justice in certain Cases.*" A Chapter upon this highly important Act of Parliament will be found in its place at page 207, and the entire Statute itself is given at the end of the Work.

T. W. S.

1, Cloisters, Temple,
September, 1855.

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ABBREVIATIONS AND REFERENCES.

A. & E., or Ad. & El....	Adolphus and Ellis's reports (Queen's Bench.)
B. & Ad.	Barnewall and Adolphus's reports (King's Bench.)
B. & Ald.	Barnewall and Alderson's reports (K. B.)
B. & C.... ...	Barnewall and Cresswell's reports (K. B.)
Bail Court Rep.	Bail Court reports, by Saunders and Cole.
Bing.	Bingham's reports (Common Pleas.)
Burr	Burrow's reports.
C. & P.... ...	Carrington and Payne's reports (Nisi Prius.)
Camp.	Campbell's reports (Nisi Prius.)
Car. & Kir.	Carrington and Kirwan's reports (Nisi Prius.)
Car. & Mar.... ...	Carrington and Marshman's reports (Nisi Prius.)
Cowp.	Cowper's reports.
Cox C. C.	Cox's Criminal Cases.
D. & R.	Dowling and Ryland's reports.
Dalt.	Dalton's Justice of the Peace.
Dear. C. C.	Dearsley's Crown Cases.
Den. C. C.	Denison's Crown Cases.
Dick.	Dickinson's Quarter Sessions.
Dowl.	Dowling's reports.
East	East's reports.
Fost. C. L.	Foster's Crown Law.
Hawk. P. C.	Hawkin's Pleas of the Crown.
Keb.	Keble's reports.
L. J., Q. B., C. P., Ex. }	Law Journal reports, Queen's Bench, Common Pleas, Exchequer, or Magistrates' Cases.
or M. C.	
Leach	Leach's Crown Law.
Ld. Raym.	Lord Raymond's reports.
M. & S.	Maule and Selwyn's reports.
M'Clel. & Y.	M'Clel. and Younge's reports
M. & W.	Meeson and Welsby's reports (Exchequer.)
Mod.	Modern reports.
M. & M.	Moody and Malkins reports (Nisi Prius.)
Moo. & Rob.	Moody and Robinson's reports (Nisi Prius.)
New Mag. Cas.	New Magistrates' Cases.
New Sess. Cas.	New Sessions Cases, by Carrow, Hammerton, and Allen.
Paley	Paley on Convictions
Q. B.	Queen's Bench reports, by Adolphus and Ellis (New Series.)
Saund.	Saunders's reports.
Show.	Shower's reports.
Str.	Strange's reports.
Taunt.	Taunton's reports.
T. R.	Term reports, Durnford and East.

OF

THE VARIOUS KINDS OF MAGISTRATES' COURTS—PETTY AND SPECIAL SESSIONS—QUARTER SESSIONS—CLERK TO THE JUSTICES.

Notwithstanding, however, the vast scope of the authority of the magistracy and the great variety of the duties they have to fulfil, the practical proceedings to be adopted with the view to working out their functions are comparatively simple and easy.

Courts, then, in which the justices of the peace sit
[M. C.] B

to administer the law are established throughout the country, and may be arranged into three classes: first, courts of petty sessions; second, courts of special sessions; and third, courts of quarter or general sessions.

Courts of Petty Sessions.]—Courts of petty sessions are those local assemblages of justices which are periodically held for the transaction of the business arising within a certain locality. For the convenience of all parties the various counties have long been parcelled into petty-sessional divisions; for although the jurisdiction of every justice is co-extensive with the limits of the county or riding for which he is appointed, and so (unless excluded jurisdiction by the terms of some statute) he may act in every part of it, it has been found convenient in practice to parcel out each county into districts, and to confine the administration of the law arising within such districts respectively to those justices alone who are resident within their limits. Many acts of Parliament have expressly enacted that only the justices resident within a particular division shall have jurisdiction; but even where this is not so, it is usual in practice for the justices residing in each division to confine themselves to the business of such division only. The statutes in force regulating the constitution and mode of forming petty sessions, are the 8 Geo. 4, c. 43; 6 Wm. 4, c. 12; 12 Vict. c. 18; and the 5 & 6 Wm. 4, c. 76, s. 100.

Time and place of Meeting.]—The time and place of meeting are entirely in the discretion of the justices of the division themselves. The place is usually the town-hall of the town, if the division comprise a municipal borough, or some well-known building in the division in other cases; and the time is generally fixed at some certain and convenient hour of the day, so as to enable parties to assemble from a distance. These meetings are regulated by the usual quantity of business to be transacted; in some divisions taking place every day in the week, in others less frequently.

It may here be observed, that notwithstanding it is desirable and usual for justices to act where they can conveniently do so in concert with each other at petty sessions, it is quite competent for any individual justice (except where specially provided against) to act alone and at any place within his jurisdiction, even at his own private residence; and cases of emergency will sometimes arise when it will be convenient and proper for him to do so.

Special Sessions.]—Special sessions, or special petty sessions as they are sometimes called, are those special meetings of the justices of a division held in pursuance of some particular act of Parliament for the transaction of some peculiar business, such as for licensing ale-houses and other establishments, hearing appeals, &c.; and in respect of these sessions it is necessary (except where it is expressly dispensed with by statute) that a notice should be duly given to each justice in the division, of the time and place of the sessions and of the particular business to be transacted. The number of the sessions, the notices to be given, and occasionally the exact time of holding them, are usually provided for by the act of Parliament directing such sessions to be held.

The Justices' Clerk.]—No description of these courts would be complete without alluding to the clerk to the justices—occasionally called the clerk of petty sessions. This person is appointed by the justices of each division and holds his office during pleasure : (*Ex parte Sandys*, 4 B. & Ad. 863.) As regards the county justices, there is no express statutable authority directing his appointment, though such a functionary is frequently referred to in acts of Parliament, and the Legislature has provided for his remuneration, and has in many cases directed certain duties to be performed by him. The duties, however, of justices are so varied, and in connexion with them there is so much of a professional and formal description, that no bench could possibly act for a single day without the assistance of such an

officer. Under the Municipal Corporations Act (5 & 6 Wm. 4, c. 76, s. 102), the justices of every borough, under that act to which a separate commission of the peace is granted, are required to appoint a fit person to be clerk to such justices. The clerks to the metropolitan police courts are appointed by the Secretary of State.

To this functionary appertains the duty of seeing that the entire machinery of the court of petty or special sessions is kept in due working order. To him both the justices and the suitors naturally look for the perfecting of all arrangements necessary for the due conduct of business. To him will the justices naturally look for advice upon all points involving either difficulties of law or practice; and to him also will the suitors apply in most of those instances where the proceedings are merely of a formal or routine description. To enter more particularly into the character of his duties is here unnecessary. Such of them as require further explanation will be elucidated as they arise incidentally hereafter.

Courts of Quarter Sessions.—Courts of quarter sessions are those courts held in every county four times in each year for the trial of certain classes of criminal offences, for the hearing of appeals, &c., and for the regulation of such county matters as are entrusted to the superintendence of the justices at large. These courts have a very extensive criminal and civil jurisdiction; by far the greater portion of indictable offences being triable in them. They are held at certain well-known places, and their periods of being held are fixed by the 1 Wm. 4, c. 70, s. 30, which enacts that they shall take place respectively in the first week after the 11th October, the first week after the 28th December, the first week after the 31st March, and the first week after the 24th June, except when the spring assizes would interfere with the sessions, in which case the sessions are to be appointed to be held on some day not earlier than the 7th March nor later than the 22nd

of April (4 & 5 Wm. 4, c. 47). In boroughs, under the Municipal Corporations Act (5 & 6 Wm. 4, c. 76, s. 105), in which there is a grant of quarter sessions, such sessions are directed to be holden before the Recorder once in every quarter of a year, or at such other and more frequent times as he may think fit, or as the Queen shall direct. Although such sessions are directed to be held at the times mentioned, and must be so held, there is nothing to prevent their being adjourned from time to time and from place to place, as the justices in their discretion, having reference to the business of the county, may think desirable. And it may be observed that such adjournments, or intermediate sessions, are often adopted in large and populous counties.

General sessions are holden before the general body of the justices, under the authority which they derive from their commission, and may be holden as often as the justices deem necessary. Except, however, in the county of Middlesex (where they are still held under the express authority of the 7 & 8 Vict. c. 71), they have fallen into complete disuse, the quarter sessions with their occasional adjournments being found to be more convenient and quite equal to all the requirements of the counties.

It may here be observed that the term "*magistrate*" is often applied to a justice of the peace. In such case it has no distinguishing meaning, though it is more frequently used as descriptive of those justices who exercise their authority under charter, as in cities and boroughs. When, however, the term is used in the following pages, it will be understood as applying generally to justices of the peace.

CHAPTER II.

PROCEEDINGS IN THE COURTS OF PETTY SESSIONS.

SUMMARY CONVICTIONS AND ORDERS.

THE practice in the Courts of Petty Sessions will be best described by treating, in their order of succession, the various steps necessary to be taken to perfect a charge to be dealt with upon summary conviction; and in dealing with the subject in this way, it will be convenient to consider convictions and orders as identical in their natures, distinguishing the practice in respect of each in such cases only as their slightly varied natures may at times require. It may here be observed, that although the Legislature has in many instances directed that the decision of justices is to be recorded in the form of an order, and although a different rule of interpretation applies to orders than to convictions, the principle which dictates the adoption of the one kind of record rather than the other, is not very intelligible. It has, indeed, been said, that the practical distinction consists in this—that a *conviction* is the record of an affirmative adjudication upon an *information* for an offence or act punishable either by a penalty or imprisonment; and that an *order* is a record of a like adjudication upon a *complaint* for nonpayment of a sum of money, or for the doing of some other thing. The distinction, however, in principle is very immaterial, since every act of Parliament which is to be enforced by either the one or the other of these judgments directs which of the two is to be used; and the practice

to obtain either the one or the other is for the most part the same.

‘The choice of remedy.’—Assuming that an offence has been committed, in respect of which justices have jurisdiction, it may be prudent to consider whether or not they have *exclusive* jurisdiction, since it may occur that the party aggrieved has an option of remedies, and is not bound to seek for redress at the hands of the magistrates, or even that, should he go before them, he has a choice of proceedings. Thus, in the case of an assault and battery, the injured party may bring his action to recover damages, or he may indict his assailant, or he may choose to proceed summarily against him before justices at petty sessions; or should the assault be attended with threats of future violence, he may present articles of the peace. The various considerations which will determine the preference of any one of these proceedings need not here be discussed; suffice it to say, that in such a case, and many others, a choice actually exists, and that in the particular case of an assault, where the complainant merely desires the justices to bind over the defendant, they have no functions to deal summarily with the assault itself, it being the complainant’s right to select his own remedy, and if he desire to prefer only articles of the peace, the jurisdiction, in such case, of the justices being limited to that proceeding: (*Reg. v. Deny*, 20 L. J. 189, M. C.)

Before whom, when, and where complaint to be made.]
—Supposing the nature of the grievance to be such that the only remedy is by summary conviction, or that this mode is deemed preferable to any other, it will be of importance, before initiating any proceedings, to consider before whom, within what time, or in what locality the complaint or information should be laid. In most cases, the act of Parliament which confers the summary jurisdiction, points out the restrictions as to person, time and locality; but if no such limits are defined, the information may be laid before any justice acting in and

for the county in which the parties may be living, or the offence committed, so that it be laid within six calendar months from the time when the matter of such information (or complaint) arose: (11 & 12 Vict. c. 43, s. 11.)

Many modern acts of Parliament have directed that the summary proceedings, in given cases, shall take place in the petty-sessional division in which the subject-matter of the information or complaint has arisen, or in which one of the parties resides; thus, under the Bastardy Act (7 & 8 Vict. c. 101), the application for a summons against the putative father is to be made to a justice acting for the petty-sessional division in which the woman resides; and also under the various licensing acts, and the Highway Act, justices of certain divisions alone have jurisdiction. So, too, the limitations with regard to time within which these proceedings are to be adopted or finally terminated, are frequently provided for by the several acts of Parliament applicable to them; but by the 11 & 12 Vict. c. 43, s. 11, it is enacted, "That in all cases where no time is already or shall hereafter be specially limited for making any such complaint or laying any such information in the act or acts of Parliament relating to each particular case, such complaint shall be made, and such information shall be laid, within six calendar months from the time when the matter of such complaint or information respectively arose." As, however, no complaint should be made or information laid without a careful perusal of the statute upon the subject, and as the question of jurisdiction is one to which the justices will, for their own security, themselves attend, little more need be added in this place.

Practice under the 11 & 12 Vict. c. 43—Exceptions.]
—The practice at petty sessions upon summary proceedings is now chiefly regulated by the 11 & 12 Vict. c. 43, entitled, "An Act to facilitate the performance of the duties of Justices of the Peace out of Sessions within England and Wales with respect to Summary

Convictions and Orders." This statute, however, by section 35, is declared not to be applicable—

1. To any warrant or order for the removal of any poor person chargeable to any parish, &c.
2. Nor to any complaints or orders with respect to lunatics or their expenses, &c.
3. Nor to any information, &c., under or by virtue of the statutes relating to the excise, customs, stamps, taxes, or post-office.
4. Nor to any complaints, warrants, or orders in bastardy, except as relates to the backing of warrants for compelling the appearance of the putative father, or warrants of distress, or the levying of sums ordered to be paid, or to the imprisonment of the defendant for nonpayment of the same.
5. Nor to any proceedings under the acts regulating or relating to the labour of children and young persons in mills and factories.

From these exceptions it will be seen that a very numerous body of offences is excluded, amongst which may be named those under the acts relating to bastardy (in respect of which, by the 8 Vict. c. 10, a complete body of forms is supplied), beerhouses, customs and excise generally, factories, game, hawkers and pedlars, lunatics, poor, postmasters, post-office, smuggling, wreck, and salvage. Whenever, therefore, an information is to be laid in respect of an offence under any one of these acts, the proceedings under the 11 & 12 Vict. c. 43 will be no guide, and the practice will be that which is provided for by the particular acts themselves, or by the old rules of practice as they obtained before the foregoing statute of Victoria. With respect, however, to the statutes relating to the excise (and so it should seem with respect to the other excepted heads) it has been held that the exception in sect. 35, does not apply where the particular information or complaint proceeds upon a section not relating to the revenue of excise, &c., although there are other sections in the statute which do relate to the revenue of excise, &c.; and that

a conviction therefore under sect. 8 of 4 & 5 Wm. 4, c. 85, for signing a false certificate for the purpose of obtaining a license for the sale of beer, drawn up according to the form provided in schedule (I. 1) of 11 & 12 Vict. c. 43 is valid : (*Reg. v. Bakewell*, 26 L. J. 150, M. C.)

The practice, therefore, with reference to matters contained in acts passed prior to the foregoing statute is henceforth to be regulated by such act ; statutes subsequently passed, also, where no special directions are given as to proceedings, will be governed in this particular by the same enactment. Care, however, must be taken to ascertain whether or not such subsequent enactment does contain any special directions ; since, notwithstanding the ample code of practice contained in the statute to which reference has been made, it has occurred that, with a singular inattention to this fact, other statutes have become law containing very unnecessarily numerous clauses, merely to effect the object of the before-mentioned enactment.

The information..]—It being determined to proceed, for any given offence by way of summary conviction the first step to be taken is that of laying an information or making a complaint. Upon this subject the 1st section of the 11 & 12 Vict. c. 43, enacts :—

That in all cases where an information shall be laid before one or more of Her Majesty's justices of the peace for any county, riding, division, city, borough, or place within England and Wales, that any person has committed or is suspected to have committed any offence or act within the jurisdiction of such justice or justices, for which he is liable by law upon a summary conviction for the same before a justice or justices of the peace to be imprisoned or fined, or otherwise punished, and also in all cases where a complaint shall be made to any such justice or justices upon which he or they have or may have authority by law to make any order for the payment of money or otherwise ; then and in every such case it shall be lawful for such justice or justices of the peace to issue his or their summons, directed to such person, stating shortly the matter of such information or complaint, and requiring him

to appear at a certain time and place before the same justice or justices, or before such other justice or justices of the same county, riding, division, liberty, city, borough, or place, as shall then be there, to answer to the said information or complaint, and to be further dealt with according to law.

In order, therefore, to initiate proceedings, an information should be made in the case of a proceeding with a view to a summary conviction, or a complaint in the event of an order being desired. To this end, application should be made to a justice for a summons or warrant, according to circumstances.

When to be upon oath—or in writing—by whom it may be laid.]—Unless the particular statute requires it, the information or complaint need not be in writing, nor upon oath, and may be made by the complainant or informant in person, or by his attorney or any other person by his authority. Upon this subject, section 10 of the 11 & 12 Vict. c. 43, enacts :—

That every such complaint upon which a justice or justices of the peace is or are or shall be authorized by law to make an order, and that every information for any offence or act punishable upon summary conviction, unless some particular act of Parliament shall otherwise require, may respectively be made or laid without any oath or affirmation being made of the truth thereof, except in cases of informations where the justice or justices receiving the same shall thereupon issue his or their warrant in the first instance to apprehend the defendant as aforesaid; and in every such case where the justice or justices shall issue his or their warrant in the first instance, the matter of such information shall be substantiated by the oath or affirmation of the informant, or by some witness or witnesses on his behalf, before any such warrant shall be issued; and every such complaint shall be for one matter of complaint only, and not for two or more matters of complaint; and every such information shall be for one offence only, and not for two or more offences; and every such complaint or information may be made or laid by the complainant or informant in person, or by his counsel or attorney, or other person authorized in that behalf.

Although the information or complaint need not be

in writing (unless expressly required to be so by the particular act of Parliament), it will be convenient that it should be so in all cases out of the common run; in any of which cases the form given at the end of this chapter may be adopted.

The 10th section, as we have before seen, not only dispenses with any oath or affirmation in support of a complaint or information, but directs that it may be laid or made by the complainant or informant in person, or by his counsel or attorney, or other person authorized in that behalf. This must be taken, however, as applicable to those cases only where the particular party to lay the information or make the complaint is not pointed out by the particular statute; for in cases in which he is so pointed out, he only, can do the act. Formerly, where, under certain statutes, portions of the fines or penalties were to be awarded to the informant, it became of importance to see that the information was not laid at the instance of one whose testimony was necessary to support the case; since, as his interest would have excluded his evidence, the information would thereby have stood greatly in peril of falling to the ground. Now, however, as all objections on the ground of interest in the informant are at an end (14 & 15 Vict. c. 99, s. 2), it is immaterial who lays the information, unless, as was before observed, some particular person is indicated by the statute.

Amendment of.]—Where the information (if in writing) is laid in respect of some offence governed by the practice under the 11 & 12 Vict. c. 43, its technical accuracy is not a matter of very much importance, since by sections 1 and 9 of that statute no objections are to be allowed to any information, complaint, or summons for any alleged defect in substance or form, or for any variance between such information, complaint, or summons and the evidence adduced; but if such variation is calculated to deceive or mislead, the hearing may be adjourned. In such a case, therefore, an informality or defect in the information or complaint is

of little importance; but in those numerous cases which are not governed by the practice under the before-mentioned act these defects may be of serious consequence, and a variance between the information, complaint, or summons and the evidence adduced may result in the dismissal of the complaint, &c., and the immediate discharge (if in custody) of the offending party. Such being the case, it will be useful to consider shortly what are the technical requisites of a complaint or information in cases not governed by the above statute, and then to show shortly in what particulars that statute effects an alteration.

FIRST.

OF INFORMATIONS AND COMPLAINTS THAT ARE *NOT* WITHIN THE OPERATION OF THE 11 & 12 VICT. C. 43.

Statement of Time.—The information (and herein also we include complaints) should state the day and year on and in which it is exhibited or laid, to the end that it may appear both that it was exhibited subsequently to the commission of the offence and within the time limited by the statute: (*Rex v. Kent*, 2 Ld. Raym. 1546; *Rex v. Fuller*, *id.* 510; *Rex v. Picton*, 2 East, 196; *Rex v. Chandler*, 14 East, 272.) But though the time must thus be stated with certainty, it need not be stated with strict accuracy, and it will be sufficient if it appear from the evidence that in fact the information has been exhibited in due time, and the time stated is within that limited by law.

Name and style of Justice.—So, too, the information must give the name and style of the justice before whom it is taken, that it may appear he is one having authority in the district and over the subject-matter of the complaint: (*Rex v. Johnson*, 1 Str. 261; *Kite and Lane's case*, 1 B. & C. 101; *Re Peerless*, 1 Q. B. 143.) Stating the justice to be one “for the county,” instead of “in and for,” is bad: (*Reg. v. Stockton*, 2 New Sess.

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Cas. 16; 14 L. J. 128, M. C.) And where the statute gives jurisdiction to the *next* justice, he should be so described, as none other has jurisdiction (*Sander's case*, 1 Saund. 263; Dalt. c. 6); but if the statute mention only *in* or *near* the place, it is merely directory and they need not be so described: (2 Keb. 559.) But where the act gives jurisdiction to certain justices only as "to the justices acting at a petty-sessional division of the county where the applicant resides," as in the 7 & 8 Vict. c. 101, s. 2, or "to the justices acting at a petty sessions for the highways in which the highway is situated" 5 & 6 Wm. 4, c. 50, ss. 94, 95), it must appear that at the time of the exhibiting of the information the justices came within the statutable description: (*Reg. v. Martin*, 2 Q. B. 1037; *Reg. v. Morice*, 1 New Sess. Cas. 585; 2 D. & L. 952; *Reg. v. The Justices of Hertfordshire*, 1 New Mag. Cas. 256; 6 Q. B. 753.)

Names of Informant and Defendant.—It should also contain the name of the informant (*Rex v. Stone*, 2 Ld. Raym. 1545) and also that of the defendant, the full name being accurately given. Styling a number of defendants as "*Messrs. Harrison and Company*" was held bad; Lord Kenyon saying, "It is impossible that a conviction of such an one and *company* can be supported:" (*Rex v. Harrison*, 8 T. R. 508.) No addition however need be given to the name of the defendant, and by the General Turnpike Act (3 Geo. 4, c. 126, s. 132), and the General Highway Act (5 & 6 Wm. 4, c. 50, s. 78), certain parties may be proceeded against summarily, without stating their names, if they refuse to disclose them; but in such a case it would be desirable to state their description.

When to be stated as taken upon Oath.—If the statute require the information to be exhibited on *oath*, it should appear to have been so taken: (*Ex parte Aldridge*, 2 B. & C. 600; *Reg. v. Scotton*, 5 Q. B. 493; 13 L. J. 58, M. C.)

Time and place of the commission of the Offence.—The time of the commission of the offence should be stated, that it may appear that the information was laid in due time, and also as a protection for the defendant against another charge in respect of the same matter; the exact day however is immaterial, if the time be within the statutable limits: (*Rex v. Crop*, 7 East, 389; *R. v. Huggins*, 3 C. & P. 602; *R. v. Simpson*, 10 Mod. 248.) So also the *place*—namely, the parish and county where the offence was committed—should be stated, in order that the jurisdiction of the justices over it may clearly appear: (*Rex v. Hazell*, 13 East, 139; *Kite and Lane's case*, 1 B. & C. 101.) The statement of the *name* in the margin will not supply the want of this statement in the body of the information: (*Rex v. Austin*, 8 Mod. 309; *Deybell's case*, 4 B. & Ald. 243, 247; *R. v. Fletcher*, 13 L. J. 16, M. C.) But where locality has been once named, as “at B. in the county of S.” it is sufficient afterwards to say “at B. afore-said:” (*Reg. v. Burnaby*, 2 Ld. Raym. 901.) If, in fact, a particular parish, or other locality, however limited, be an ingredient in the offence, it must be accurately stated: (*Deybell's case*, 4 B. & Ald. 243, 247; *Reg. v. Fletcher*, 13 L. J. 16, M. C.); particularly when the penalty, or a part of it, is directed to be given to the poor of the parish. In general, however, it is not essential to be strictly accurate as to the statement of *place*, it being sufficient if it be proved that the offence was committed within the jurisdiction of the justices before whom the information is exhibited.

Description of the Offence.—The information should give an exact and a legal description of the offence, and it should contain the same certainty as an indictment: (*Ex parte Pain*, 5 B. & C. 251; *Re Elmy and Sawyer*, 1 Ad. & Ell. 843; *R. v. Marsh*, 4 D. & R. 267.) Facts must be stated in a direct and positive manner: (*Rex v. Bradley*, 10 Mod. 155; *Rex v. Fuller*, 1 Ld. Raym. 509; *Rex v. Pereira*, 2 Ad. & Ell. 375); and not be in the alternative: (*Rex v. Middlehurst*, 1 Burr. 399; *R. v.*

Morley, 1 You. & Jer. 22; *R. v. Marshall*, 1 Mod. c. 158.) In fact the description of the charge must include in express terms every ingredient required by the statute to constitute the offence, nothing being left to intendment, inference, or argument: (*R. v. Turner*, 4 B. & Ald. 510; *Rex v. Daman*, 1 Chit. Rep. 152; *Rex v. Jukes*, 8 T. R. 536; *R. v. Trelawny*, 1 T. R. 222; *Rex v. Pereira*, 2 Ad. & Ell. 375; *Charter v. Greame and another*, 18 L. J. 73, M. C.; 13 Q. B. 216.) Where the gist of the offence is a *guilty knowledge*, there must be a direct averment of its existence: (*Rex v. Llewellyn*, 1 Show. 48; *Rex v. Jukes*, 8 T. R. 536; *Rex v. Marsh*, 2 B. & C. 717; *Chaney v. Payne*, 2 Q. B. 712; *Ex parte Hawkins*, 2 B. & C. 31.) So the information should not state the merely legal result of facts, but the facts themselves: (*Rex v. Sparling*, 1 Str. 497; *Rex v. Daman*, 1 Chit. Rep. 147; *Reg. v. Rowed*, 3 Q. B. 180.) And where the words of a statute are general, as where they state merely the legal effect, it will nevertheless be necessary to specify the particular facts constituting the offence: (*Rex v. Jervis*, 1 East, 643, n.; *Rex v. Neild*, 6 East, 417; *Rex v. Ridgway*, 5 B. & Ald. 527; *R. v. Daman*, 2 B. & Ald. 379; *Fletcher v. Calthrop*, 14 L. J. 16, M. C.) It is not however necessary to use the actual words of a statute, provided those used are equivalent: (*Stamp v. Sweetland*, 2 New Sess. Cas. 90; 8 Q. B. 13.)

Sums and Quantities.—Where the question turns upon particular sums or quantities, they must be particularized: (*Rex v. Catherall*, Str. 900; *Rex v. Marshall*, 2 Keb. 594); especially as the justices in many cases are empowered to award compensation according to the amount of damage (*Rex v. Gibbs*, 1 Str. 497), and the more so as in many cases their jurisdiction depends upon the amount of damage done: (*Charter v. Greame*, 18 L. J. 73, M. C.)

Of Exceptions and Provisoos.—The information, when on a penal statute, should show that the defen-

dant is not within any of the provisoes contained in the clause by which he is sought to be charged: (2 Hawk. P. C. c. 25, s. 113; *R. v. Bell*, Fost. C. L. 430; *Gill v. Simeon*, 7 T. R. 27.) The rule upon the subject is very clearly stated by Mr. Paley in his work on Convictions. He thus states it—"The rule, therefore, and distinction resulting from these, and confirmed by the cases mentioned in the sequel, seem to be clear; viz., that all circumstances of exemption and modification, whether applying to the *offence* or to the *person*, that are originally introduced or incorporated by reference with the enacting clause, must be distinctly enumerated and negatived; but that such matters of excuse as are given by other distinct clauses or provisoes need not be specifically set out or negatived:" (*Steel v. Smith*, 1 B. & Ald. 94); and it is immaterial whether the exception be in another section or in a distinct act of Parliament, if referred to and engrafted into the enacting clause: (*Rex v. Pratten*, 6 T. R. 559; *Reg. v. Matthews*, 10 Mod. 27; *Rex v. Jarvis*, 1 Burr. 148; 1 East, 643; *Rex v. Theed*, 1 Ld. Raym. 1375.) This doctrine was most distinctly upheld in the recent case of *Van Boven*: (16 L. J. 4, M. C.) Where, however, the offence charged is of such a nature that its existence depends upon the act complained of being done without any legal excuse, as where, under the Masters and Servants Act (1 Geo. 4, c. 34), the servant is charged with having absented himself, it must be alleged that such absence was without leave and lawful excuse, notwithstanding no such condition or qualification is referred to in the statute: (*In re Turner*, 15 L. J. 140, M. C.)

Written Instruments.—When a written instrument is referred to, it should be stated with perfect accuracy: (*Rex v. Powell*, 2 East, P. C. 976; *Wright v. Clement*, 3 B. & Ald. 503.)

Several Offences.—A defendant may be proceeded against in the same information for several offences

against the same statute : (*Rex v. Swallow*, 8 T. R. 284.) But they must be distinctly charged : (*Newman v. Bendysh*, 10 A. & E. 11.)

Recital of a Statute.]—When a statute is referred to, care should be taken to recite it correctly ; thus it is incorrect to describe a statute as passed in more years than one of the sovereign's reign, as "in the second and third years of the reign," &c., and this notwithstanding such statute may in fact be so recited in subsequent acts of Parliament : (*Rex v. Biers*, 1 A. & E. 327 ; *Beak v. Beverley*, 11 M. & W. 846.) The proper way to describe such a statute is to say, "passed in the session of Parliament holden in the second and third years of the reign," &c. Many modern acts of Parliament describe how they are to be cited, as "The Nuisances Removal for England Act, 1855 : " (18 & 19 Vict. c. 121.)

As the proviso in the 11 & 12 Vict. c. 43, ss. 1, 9, enacting (as before mentioned) that no objection shall be allowed to any information, &c., for any alleged defect in substance or in form, or for any variance between the information, &c., and the evidence, &c., applies only to informations, &c., within the operation of that statute, and therefore has no application to informations *not* within that act, and as the justices have no power to amend an information defective in any of the particulars pointed out, but, upon any objection founded upon any such defects would in most cases be bound to dismiss the information, the importance of care and accuracy cannot be too strongly enforced.

SECOND.

OF INFORMATIONS AND COMPLAINTS THAT ARE WITHIN THE OPERATION OF THE 11 & 12 VICT. C. 43.

Power of Amendment, Inaccuracies, &c.]—It having before been shown what informations and complaints are and are not within the above statute, and assuming, therefore, that a given subject-matter is within the

operation of this statute, it will be seen that a very great latitude is permitted in framing these documents. The proviso in the 1st section of the above statute runs in these words :

Provided also, that no objection shall be taken or allowed to any information, complaint, or summons, for any alleged defect therein in substance or in form, or for any variance between such information, complaint, or summons, and the evidence adduced on the part of the informant or complainant at the hearing of such information or complaint as hereinafter mentioned; but if any such variance shall appear to the justice or justices present and acting at such hearing to be such that the party so summoned and appearing has been thereby deceived or misled, it shall be lawful for such justice or justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day.

So, too, the 9th section contains a provision rendering certain inaccuracies immaterial. It runs as follows :

That in all cases of informations for any offences or acts punishable upon summary conviction, any variance between such information and the evidence adduced in support thereof as to the time at which such offence or act shall be alleged to have been committed, shall not be deemed material if it be proved that such information was in fact laid within the time limited by law for laying the same; and any variance between such information and the evidence adduced in support thereof as to the parish or township in which the offence or act shall be alleged to have been committed shall not be deemed material, provided that the offence or act be proved to have been committed within the jurisdiction of the justice or justices by whom such information shall be heard and determined; and if any such variance or any variance in any other respect between such information and the evidence adduced in support thereof shall appear to the justice or justices present and acting at the hearing to be such that the party charged by such information has been thereby deceived or misled, it shall be lawful for such justice or justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day, &c.

Aiders and Abettors..]—The 11 & 12 Vict. c. 48,

introduces a new class of offenders punishable upon summary conviction, namely *aiders* and *abettors*. At common law there could be no accessories in any offence below that of felony, all parties being either principals or in nowise punishable. But by section 5 of this act it is enacted—

That every person who shall aid, abet, counsel or procure the commission of any offence which is or hereafter shall be punishable on summary conviction, shall be liable to be proceeded against and convicted for the same, either together with the principal offender or before or after his conviction, and shall be liable, on conviction, to the same forfeiture and punishment as such principal offender is or shall be by law liable, and may be proceeded against and convicted either in the county, riding, division, liberty, city, borough, or place where such principal offender may be convicted, or in that in which such offence of aiding, abetting, counselling or procuring may have been committed.

Time of laying an Information.—The time within which the proceedings are to be instituted is generally stated in the statute itself, but where no time is limited the 11 & 12 Vict. c. 43, has directed that the limit shall be six calendar months. The 11th section of that statute enacts—

That in all cases where no time is already or shall hereafter be specially limited for making any such complaint or laying any such information in the act or acts of Parliament relating to each particular case, such complaint shall be made and such information shall be laid within six calendar months from the time when the matter of such complaint or information respectively arose.

Mode of computing Time.—It may be here advisable to state the manner in which time is computed. As a general rule, where the proceedings in respect to any act done are to be instituted within a limited period from the commission of such act, the time is computed exclusive of the day of such commission and inclusive of the day of the institution of the proceedings: (*Williams v. Burgess*, 12 A. & E. 635.) If a *year* be mentioned, or any aliquot part of it, the computation is by calendar months; and by the 13 & 14 Vict. c. 21,

s. 4, it is enacted, as regards *months*, that the word "month" shall mean calendar month, unless words be added showing a lunar month is intended. If an act is to be done within so many *days at least*, or so many *clear days*, such days are to be exclusive of both the first and last days: (*Zouch v. Empsey*, 4 B. & Ald. 522; *Reg. v. The Justices of Middlesex*, 14 L. J. 139, M. C.; *Mitchell v. Foster*, 12 A. & E. 472.) See the interpretation put upon the words "as soon as possible" in *Attwood v. Emery*: (26 L. J. 73, C. P.)

Who may lay Information.—We have before seen that by section 10 of the 11 & 12 Vict. c. 43, every complaint or information within the operation of the act may be laid or made by the complainant or informant in person, or by his counsel or attorney, or other person authorized in that behalf.

When Complaint or Information to be in writing.—The complaint or information need not be in writing, but in most cases it will be desirable that it should be so, and the justices have clearly a right to require its being in that form. Where by any statute, however, the information is required to be in writing, it should still be so framed; and by section 8 it is expressly enacted, with respect to *complaints*, that in all cases of complaints upon which a justice or justices of the peace may make an order for the payment of money or otherwise, it shall not be necessary that such complaint shall be in writing, unless it shall be required to be so by some particular act of Parliament upon which such complaint shall be framed.

When to be upon Oath.—The complaint or information need never be substantiated upon oath in the first instance unless it is intended to issue a warrant, or some particular act of Parliament shall require it. Upon this point the 10th section of the 11 & 12 Vict. c. 43, enacts—

That every such complaint upon which a justice or justices of the

peace is or are or shall be authorized by law to make an order, and that every information for any offence punishable upon summary conviction, unless some particular act of Parliament shall otherwise require, may respectively be made or laid without any oath or affirmation being made of the truth thereof; except in cases of informations, where the justice or justices receiving the same shall thereupon issue his or their warrant in the first instance to apprehend the defendant as aforesaid, and in every such case where the justice or justices shall issue his or their warrant in the first instance, the matter of such information shall be substantiated by the oath or affirmation of the informant, or by some witness or witnesses on his behalf, before any such warrant shall be issued.

Describing the Property of Partners, &c.—The 11 & 12 Vict. c. 43, contains provisions as to how the property of partners and others may be described, and by the 4th section it is enacted that in any information or complaint, or the proceedings thereon, in which it shall be necessary to state the ownership of any property belonging to or in the possession of *partners, joint tenants, parceners, or tenants in common*, it shall be sufficient to name one of such persons, and to state the property to belong to the person so named and another or others, as the case may be; and so, when it is necessary to name such parties. The same section has kindred provisions with reference to counties, ridings, cities, boroughs, &c., and also as regards goods provided for the poor of a parish, or materials for parish or turnpike roads, or the sewers of any district.

Information to be in respect of one thing only.—The information or complaint must be in respect of one matter only. Upon this head section 10 of the 11 & 12 Vict. c. 43, enacts—

That every such complaint shall be for one matter of complaint only and not for two or more matters of complaint; and every such information shall be for one offence only, and not for two or more offences.

It may be observed, that notwithstanding the fore-

going section limits a complaint or information to one matter only, it will not prevent several parties from being included if they are jointly concerned in the subject-matter of the complaint or information.

One Justice may receive Complaint, &c.—Under the 11 & 12 Vict. c. 43, one justice is competent to receive the complaint or information. Section 29 of this statute thus enacts upon the subject :—

That, in all cases of summary proceedings before a justice or justices of the peace out of sessions upon any information or complaint as aforesaid, it shall be lawful for one justice to receive such information or complaint and to grant a summons or warrant thereon, and to issue his summons or warrant to compel the attendance of any witnesses, and to do all other necessary acts and matters preliminary to the hearing, even in cases where by the statute in that behalf such information or complaint must be heard and determined by two or more justices.

Matters to which the 11 & 12 Vict. c. 43, will not apply.—Before dismissing this subject, it may be well to caution the practitioner against relying too confidently upon the provisions of the 11 & 12 Vict. c. 43 ; for although that statute was intended to provide a code of practice in all cases not specially excepted in the 36th section, the Legislature, with a carelessness highly to be deplored, has in many subsequent statutes directed a course of procedure in particular instances greatly at variance with such code ; amongst which statutes we may mention the 11 & 12 Vict. c. 63 (Public Health Act, 1848), 11 & 12 Vict. c. 123 (Nuisances Act, 1848), 12 & 13 Vict. c. 92 (Cruelty to Animals Act.) So that in every instance where the case is to be dealt with upon a summary hearing, it will be proper to refer to the particular statute in order to ascertain if there are any special provisions governing the practical proceedings.

Mode of Proceeding.—The usual course of proceeding in laying an information or making a complaint is to make application to the clerk of the justices who

hears the particulars, and who, if the information or complaint is required to be reduced to writing, prepares it accordingly. In very special circumstances, however, where the information or complaint is of a technical character, as under the Excise or Customs Acts; or where it is very desirable to avoid the least delay, it is usual to take the information or complaint to the clerk already prepared. The following forms may be adopted:—

INFORMATION ON OATH.

— } THE information and complaint of A. B., of the parish of C.,
to wit. } in the county of D., yeoman, taken and made upon oath
before me the undersigned E. F., Esquire, one of Her Majesty's justices
of the peace acting in and for the said county of D., this day
of , A.D. , who saith, that on the day of ,
A.D. , at the parish of G. in the county aforesaid, G. H., of the
parish of G. in the said county, labourer, did unlawfully (*here state the
offence committed, so as to come within the terms of the statute or
statutes under which the information is laid*), contrary to the statute
(or statutes) in that case made and provided; and thereupon the said
A. B. prayeth that the said G. H. may be summoned to answer the
said charge according to law (*or in case of a warrant being issued in
the first instance, that the said G. H. may be apprehended for the said
offence and dealt with according to law.*)

(*Informant's signature.*)

Taken (*or taken and sworn*) before me, the
day and year first above written,

(*Justice's signature.*)

INFORMATION WITHOUT OATH.

— } BE it remembered, that on this day of , A.D.
to wit. } , A. B. of the parish of C., in the county of D., yeoman,
cometh before me the undersigned E. F., Esquire, one of Her Majesty's
justices of the peace acting in and for the said county of D., and com-
plaineth against G. H., of the parish of G. in the said county, labourer,
for that he the said G. H., on the day of , A.D. , at
the parish of G. in the said county, did unlawfully (*here state the offence
committed, so as to be within the terms of the statute or statutes under*

which the information is laid)), contrary to the statute (*or statutes*) in that case made and provided; and thereupon the said A. B. prayeth that the said G. H. may be summoned to answer the said complaint.

(*Informant's signature.*)

Exhibited before me, the day and
year first above written,

(*Justice's signature.*)

INFORMATION AT THE SUIT OF AN INFORMER WHERE HE IS
ENTITLED TO A PORTION OF THE PENALTY.

— } BE it remembered, that on the day of , A.D.
to wit. } , at , in the county of , A. B., of , in
the county aforesaid, labourer, who, as well for our Sovereign Lady the
Queen (*or for the poor of the parish of , in the said county, or as
the statute may direct*) as for himself, doth prosecute in this behalf per-
sonally, cometh before me the undersigned, one of Her Majesty's justices
of the peace acting in and for the said county, and, as well for our said
Lady the Queen (*or for the poor of the said parish, or as the case may
be*) as for himself, informeth me that C. D., late of the parish of ,
in the county aforesaid, labourer, within the space of six calendar months
(*or whatever time is limited by statute*) now last past, to wit, on
the day of in the year aforesaid, at the parish of , in
the county aforesaid (*here state the facts and circumstances constituting
the offence, as defined by the statute or statutes creating it*), contrary to
the form of the statute (*or statutes*) in such case made and provided,
whereby and by force of the statute (*or statutes*) in such case made
and provided, the said C. D. hath forfeited for his said offence the sum
of . Wherefore the said A. B., who sueth as aforesaid,
prayeth the consideration of me the said justice in the premises, and
that the said C. D. may be convicted of the offence aforesaid; and that
one moiety of the said forfeiture may be adjudged to our said Lady the
Queen (*as the case may be*) and the other moiety thereof to the said
A. B., according to the form of the statute (*or statutes*) in such case
made and provided; and that the said C. D. may be summoned to appear
before me, and answer the premises and his defence thereto.

(*Informant's signature.*)

Exhibited, &c.

(*Justice's signature.*)

CHAPTER III.

THE MODE OF COMPELLING THE ATTENDANCE OF PARTIES—THE SUMMONS—WARRANT—SUBPENA TO WITNESSES.

The Process to compel Appearance—Summons—Warrant..]—The first step to be taken, upon its being determined to proceed by way of summary conviction, is to obtain process for the appearance of the defendant. This process is of two kinds, namely, *a summons* and a *warrant*; and when the one or the other is to issue will depend much upon circumstances. In many statutes the process is pointed out; but where this is not so, the proceedings will be regulated by the 11 & 12 Vict. c. 43, which, by section 1, enacts, that in the cases in which a justice has jurisdiction, it shall be lawful for him or them

To issue his or their summons directed to such person, stating shortly the matter of such information or complaint, and requiring him to appear at a certain time and place before the same justice or justices, or before such other justice or justices of the same county, riding, division, liberty, city, borough, or place as shall then be there, to answer to the said information or complaint, and to be further dealt with according to law.

The Warrant..]—Such is the provision with reference to the issuing in the first instance of a *summons*. But it may be lawful and advisable to issue a *warrant* in preference to a *summons*; and, in such case, the same statute, by section 2, enacts

That upon such information being laid as aforesaid for any offence punishable on conviction, the justice or justices before whom such infor-

mation shall have been laid, may, if he or they shall think fit, upon oath or affirmation being made before him or them, substantiating the matter of such information to his or their satisfaction, instead of issuing such summons as aforesaid, issue, in the first instance, his or their warrant for apprehending the person against whom such information shall have been so laid, and bringing him before the same justice or justices, or before some other justice or justices of the peace in and for the same county, riding, division, liberty, city, borough, or place, to answer to the said information, and to be further dealt with according to law.

Which process to be used in cases not within the 11 & 12 Vict. c. 43.—As respects which of these two processes is to be used, regard must be had to whether or not the proceedings be governed by the 11 & 12 Vict. c. 43. If they are *not*, the law may be taken to be this: In all cases where justices are not expressly authorized to issue a warrant in the first instance, and where the offence does not involve a breach of the peace, the proper course is to issue a summons; and, indeed, where the offence is not deposed to upon oath, a summons is the *only* process. In many cases in which a justice is called upon to act, the statute expressly gives him a power to issue his warrant in the first instance; but even in such cases (unless the direction be imperative) it will be a matter of discretion with him whether or not he will in the first instance issue his summons merely. If, however, the statute is altogether silent upon the subject, a summons should be the only process in the first instance, and a warrant, even in those cases in which it may lawfully issue, should always be founded upon a deposition upon oath.

Which Process to be used in Cases within the 11 & 12 Vict. c. 43.—The powers of justices, however, in cases within the 11 & 12 Vict. c. 43, are more extensive, for by that statute (sect. 2) a justice may issue his warrant in the first instance, upon an information being laid for any offence punishable upon summary conviction; but in that case also, the matter of such information must be substantiated upon oath to his satisfaction.

Application for a Summons.—If, therefore, the case is one in which it is not thought necessary to issue a warrant in the first instance, or in which a warrant cannot be so issued, the first step will be to apply to a justice for a summons. It may or may not be necessary to lay a written information; if the statute does not require it, it is seldom required by the magistrate, and in no case, if a summons only is to issue, is the information required to be substantiated upon oath, or unless required by some particular act of Parliament.

Form of Summons.—Upon hearing a statement of facts, the justice will, if a *primâ facie* case be stated, direct his summons to issue. If the case be within the 11 & 12 Vict. c. 43, very explicit directions are given as to this process. If, however, it be *not* within that statute, then the following directions should be carefully observed. In the latter case, two forms of summonses have been in use; one directed to the defendant himself, and the other, by way of precept, to the constable; but in either form (and they may be used indifferently), it should name a day and time for the defendant's appearance, and this at a convenient period after the service: (*R. v. Mallinson*, 2 Burr. 679; 1 Stra. 261); care being taken, that if the statute has any special provisions as to the time of service, they be strictly complied with. The summons should also name the place at which the defendant is to appear (*R. v. Simpson*, 1 Stra. 46), and should not bear date on a day earlier than the date of the information: (*R. v. Kent*, 2 Ld. Raym. 1546.) It should set forth shortly the nature of the offence, and should be signed by the justice by whom it is granted. Where the statute authorizes a justice to summon a party before him without adding "or any other justice," only *such justice* has authority to hear the case; and it will, therefore, be important that the summons should be issued by the same justice as the one who will hear the case: (*Jones v. Gurdon*, 2 Q. B. 600; 11 L. J. 45, M. C.; *Reg. v. Griffin*, 15 L. J. 120, M. C.)

For all cases within the 11 & 12 Vict. c. 43, a form of summons is given, and inasmuch as this contains all the requisites for cases, whether within this statute or not, it is advisable it should be universally adopted. The form is as follows :—

SUMMONS TO THE DEFENDANT UPON AN INFORMATION OR COMPLAINT.

— } To A. B. of , (labourer.)
to wit } Whereas information hath this day been laid (or complaint hath this day been made) before the undersigned (one) of Her Majesty's justices of the peace in and for the said (county) of ; for that you (here state shortly the matter of the information or complaint) : These are, therefore, to command you in Her Majesty's name to be and appear on at o'clock in the forenoon at , before such justices of the peace for the said county as may then be there, to answer to the said information (or complaint), and to be further dealt with according to law.

Given under my hand and seal this day of in the
year of our Lord, at in the (county) aforesaid.
J. S. [L. s.]

The information, when reduced to writing, should always be carefully read over in the presence of the defendant.

Service of the Summons.—In cases *not* within the 11 & 12 Vict. c. 43, the service of the summons should be personal, unless especially dispensed with : (*R. v. Hall*, 6 D. & R. 14 ; *R. v. Simpson*, 12 Mod. 345 ; *Mason v. Barker*, 1 Car. & Kir. 307, 100 n.)

In cases, however, which *are* within this statute, the mode of service is pointed out by section 1, which enacts—

That every such summons shall be served by a constable or other peace officer or other person to whom the same shall be delivered, upon the person to whom it is so directed, by delivering the same to the party personally, or by leaving the same with some person for him at his last or most usual place of abode.

The summons being thus obtained, the party com-

plaining will have nothing further to do with reference to it, except that he should give all necessary directions to the constable in order to its being duly served upon the defendant; of the sufficiency of which service we shall have occasion to speak in the next chapter.

When a Summons not required.—Where a justice is authorized to grant orders *ex parte*, such as orders of removal, no summons issues to the parties to be affected, the order being made in their absence and a power of appeal being given if they desire to contest the validity of the order: (*See the proviso in section 1.*)

When a Warrant may issue—Practice as to.—If the case is one in which a warrant can issue in the first instance, and the justice is satisfied that a warrant may properly issue, then it will be necessary that there should be a deposition upon oath. The powers of justices to issue a warrant in the first instance in cases *not* within the 11 & 12 Vict. c. 43, have before been observed upon (*ante*, page 27), and where the case is within this statute their powers have also been referred to: (*ante*, page 26.) The power thus possessed by the justice to issue a warrant in the first instance, he will exercise at his discretion; and he will exercise it by directing his warrant to issue only upon being satisfied that it will be useless to issue a summons merely: as that upon the service of a summons the defendant would either not appear or would abscond. And it must not be forgotten that the power to issue a warrant in the first instance applies only to a case of an information for *an offence punishable upon conviction*; and that it does not extend to a *complaint* upon which the justice is required to make an *order* only. Before, however, the justice can grant his warrant of apprehension, the information must be deposed to upon oath: (see *ante*, page 26.) The oath is usually in the following form:—

"You, A. B, do swear that the contents of this your information signed by you, are true and correct, to the best of your knowledge and belief, So help you God."

Information to be read over in presence of Justice.]

—The information, when reduced to writing, should be carefully read over, in the presence of the justice, to the party swearing to the facts. In the case of *Caudle v. Seymour*, 1 Q. B. 889, Mr. Justice Coleridge remarked —“It is far too common a practice for the clerk to examine the witnesses apart and take down the answers, and then read them over to them in the magistrate’s presence.” So, too, Mr. Justice Patteson remarks in the same case—“Magistrates should be careful not to commit this part of their duty to a clerk.” (See also *Stevens v. Clark*, Car. & Mar. 509.)

Witnesses—How to compel their Attendance.]—

Should it be necessary to support the information or complaint at the hearing by the testimony of witnesses who will not voluntarily attend, means may be obtained of enforcing their attendance. Before the passing of the 11 & 12 Vict. c. 43, justices possessed no general power to compel the attendance of witnesses; and it was rarely that the statute under which the complaint or information was preferred authorized the summoning of witnesses. And in cases not within the before-mentioned statute, the same absence of general authority upon the subject still exists. Therefore, in a case not within this statute, and in respect of which no special authority is conferred, the only means of compelling the attendance of a witness is by a crown-office subpoena, which is readily obtained at the Crown-office in London, and which, if disobeyed, may be followed by an attachment: (*Reg. v. Greenaway*, 7 Q. B. 126; *Reg. v. Carey*, 7 Q. B. 126.) If the case, however, is one within the above statute, ample means are provided for enforcing the witness’s attendance; for by section 7 of that statute it is enacted:—

That if it shall be made to appear to any justice of the peace, by the oath or affirmation of any credible person, that any person within the jurisdiction of such justice is likely to give material evidence in behalf of the prosecutor, or complainant or defendant, and will not voluntarily appear for the purpose of being examined as a witness at the time and

place appointed for the hearing of such information or complaint, such justice may and is hereby required to issue his summons to such person, under his hand and seal, requiring him to be and appear at a time and place mentioned in such summons before the said justice, or before such other justice or justices of the peace for the same county, riding, division, liberty, city, borough or place as shall then be there, to testify what he shall know concerning the matter of the said information or complaint.

And in a subsequent part of the same section power is given to the justice to issue his warrant in the first instance against a witness under certain circumstances. This part of the section is as follows:—

Or if such justice shall be satisfied, by evidence upon oath or affirmation, that it is probable that such person will not attend to give evidence without being compelled so to do, then, instead of issuing such summons, it shall be lawful for him to issue his warrant in the first instance, and which, if necessary, may be backed as aforesaid.

How to procure Warrant.]—It will thus be seen, that in cases within the statute the justice has power to grant a summons or warrant for the appearance of witnesses either for the informant or defendant; but that, whether the one process or the other be granted, there must be a deposition on oath, in the case of *a summons*, that the party resides or is within the jurisdiction of the justice, and that he is likely to give material evidence, and that he will not voluntarily appear for the purpose of being examined as a witness; and in the case of *a warrant*, in addition to the foregoing, that it is probable that such person will not attend to give evidence without being compelled to do so.

The 11 & 12 Vict. c. 43, prescribes the following forms of summons and warrant for the appearance of a witness:—

SUMMONS OF A WITNESS.

— } To E. F., of in the said (county) of .
to wit. } Whereas information was laid (or complaint was made) before
the undersigned, (one) of Her Majesty's justices of the peace in and for
the said (county) of , for that (i.e., as in the summons); and it hath

been made to appear to me upon (*oath*) that you are likely to give material evidence on behalf of the (*prosecutor, or complainant, or defendant*) in this behalf: these are therefore to require you to be and appear on , at o'clock in the forenoon, at , before such justices of the peace for the said (*county*) as may then be there, to testify what you shall know concerning the matter of the said information (*or complaint.*)

Given under my hand and seal this day of , in the
year of our Lord , at in the (*county*) aforesaid.
J. S. [L. s.]

WARRANT FOR A WITNESS IN THE FIRST INSTANCE.

— } To the constable of , and to all other peace officers in
to wit. } the (*county*) of .

Whereas information was laid (*or complaint was made*) before the undersigned, (*one*) of Her Majesty's justices of the peace in and for the said (*county*) of , for that (*fc., as in the summons*); and it being made to appear before me, upon oath, that E. F., of (*labourer,*) is likely to give material evidence on behalf of the (*prosecutor*) in this matter, and it is probable that the said E. F. will not attend to give evidence without being compelled to do so: these are therefore to command you to bring and have the said E. F. before me on , at o'clock in the forenoon, at , or before such other justices of the peace for the said (*county*) as may then be there, to testify what he shall know concerning the matter of the said information (*or complaint.*)

Given under my hand and seal, this day of , in the
year of our Lord , at , in the (*county*) aforesaid.
J. S. [L. s.]

The 11 & 12 Vict. c. 43, contains ample provisions for the backing of warrants where it is necessary to execute them out of the jurisdiction of the justice by whom they are granted.

The 11 & 12 Vict. c. 43, provides the following form for the backing of a warrant :—

INDORSEMENT IN BACKING A WARRANT.

— } Whereas proof, upon oath, hath this day been made before
to wit. } me, one of Her Majesty's justices of the peace for the said

CHAPTER IV.

THE APPEARANCE AND NON-APPEARANCE OF PARTIES
OR THEIR WITNESSES—ADJOURNMENTS, ETC.

Preparing for the Hearing.—The summons or warrant having issued, it will behove the complainant or informant to prepare himself for the hearing of the case at the time appointed; and herein it will be desirable that every attention should be paid to the getting up of the facts, since a failure at the hearing may not only be conclusive of the question, but may involve the parties in costs and expenses of serious amount.

Witnesses, Service of Summons upon—Tender of Expenses.—It has before been seen in what way the attendance of witnesses may be procured—namely, either by summons or warrant, as circumstances may require. If there be any reason to fear that the witness will not voluntarily attend, and a summons is obtained for his appearance, it will be advisable that the complainant himself, or his attorney, should see to its being duly served. This service should be a reasonable time before the hearing; and, in order to bring him into contempt for not attending, a reasonable sum should be paid or tendered to him for his costs and expenses. What is a reasonable sum will depend greatly upon the condition in life of the witness, and the distance he has come to give his evidence. No general or fixed rule can be laid down upon the subject, it being very much in the discretion of the justices. It would seem, however, that the same scale of allowance that is fixed on preliminary investigations as to indictable offences, would be reasonable in these cases.

The 7th section of the 11 & 12 Vict. c. 43, has directed how a summons for a witness may be served—namely, either personally or by leaving it for him with some person at his last or most usual place of abode. In serving such a summons, therefore, when it is not delivered personally to the witness, great care should be taken to ascertain that it is delivered really at his last or most usual place of abode, and the attention of the party in such a case should be especially directed to the importance of delivering it to the witness at the earliest moment; and it should seem, that in order to bring the party into contempt for not appearing when the summons has merely been left as aforesaid, the tender of a sum for costs and expenses should still be made. In cases not within the foregoing statute, and not provided for by the particular statute regulating the proceedings, the only mode, as has been shown (*ante*, page 31), of obtaining the presence of a witness is by a crown-office subpoena, the penalty for a disobedience to which is an attachment from the Court of Queen's Bench on a rule to show cause. In cases within the 11 & 12 Vict., the provisions as to witnesses are equally applicable to defendants.

Warrant against a Witness.—When a warrant issues in the first instance, as it may for either the complainant or the defendant (*ante*, page 30), it must be executed by a constable or other peace officer.

Having the assistance of Counsel and Attorney.—As the parties have a right, upon the hearing of all cases within the 11 & 12 Vict. c. 43, to the assistance of counsel and attorney; and as such assistance ought in no case, whether within that act or not, to be denied them, it will be a subject deserving of great consideration whether or not such assistance should be secured. This is a matter entirely for the discretion of the parties themselves, and it is sufficient here merely to indicate the existence of such a right.

Of compromising Information—Obtaining a Copy of Information.—Upon the defendant being summoned, it will be for him to decide upon the course he will take. The case may probably be of that class which permits of a compromise between the parties (of which cases occasion will hereafter arise to speak); and if so, it may be advisable to endeavour to effect an arrangement without going into court. If, however, the case is one which *must* be heard by the justices, or one which the parties desire should be so heard, and be of a technical, unusual, or difficult nature, it will be desirable to apply to the clerk to the justices for a copy of the information or complaint, should any have been taken in writing, which ought always to be supplied upon payment of the appointed fee for the same.

Parties to be in attendance when Case called on.—On the day and at the time and place appointed for the hearing, it is the duty of the contending parties to be present, and to continue in attendance until the case is called on, or otherwise disposed of.

Court of Petty-sessions, when a Public Court.—The Court of Petty-sessions, when sitting for the purpose of hearing any complaint or information to be dealt with summarily, is an open court of justice, to which all Her Majesty's subjects have a right of access if there be accommodation for them and they behave themselves orderly and with propriety. Upon this subject, Mr. Justice Bayley, in *Daubney v. Cooper* (10 B. & C. 240), observed :—

The ground upon which our present opinion is formed is, that the magistrate was proceeding upon a summary conviction, and, therefore, exercising a judicial authority. He was, as it were, a court of justice for that purpose, and we are all of opinion that it is one of the essential qualities of a court of justice that its proceedings should be public, and that all parties who may be desirous of hearing what is going on, if there be room in the place for that purpose—provided they do not interrupt the proceedings, and provided there is no specific reason why

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they should be removed—have a right to be present for the purpose of hearing what is going on.

But under the 11 & 12 Vict. c. 43, there is an express enactment with reference to proceedings within its provisions, that the room or place in which such justice or justices shall sit to hear and try any such complaint or information shall be deemed an open and public court, to which the public generally may have access, so far as the same can conveniently contain them.

Non-appearance of both Parties—Non-appearance of Complainant.]—Upon the day appointed for the hearing, the information or complaint will be called in its order, and according to the practice established by the justices for the convenient discharge of business. Should neither party appear, the justices will of course dismiss the complaint. Should the defendant appear and not the complainant, the absent party should be duly called by some authorized officer, and if he make no answer, and no one appear for him, the proceedings should be likewise dismissed. The 13th section of the 11 & 12 Vict. c. 43, directs the course of proceeding in such a case, and enacts—

That if upon the day and at the place so appointed as aforesaid, such defendant shall attend voluntarily in obedience to the summons in that behalf served upon him, or shall be brought before the said justice or justices by virtue of any warrant, then if the complainant or informant, having had such notice as aforesaid, do not appear by himself, his counsel or attorney, the said justice or justices shall dismiss such complaint or information; unless, for some reason, he or they shall think proper to adjourn the hearing of the same unto some other day, upon such terms as he or they shall think fit.

If, therefore, the complainant does not personally appear, nor appear by his counsel or attorney, the justices may dismiss the complaint, unless for some reason they may think it desirable to adjourn the hearing. This latter course, it would seem, they may adopt, notwithstanding the complainant appears neither personally

nor by his counsel or attorney ; and cases may unquestionably arise in which it will be desirable for them to do so ; remembering, however, that the interests of the defendant are concerned in such a course, and that a postponement may be productive to him of the most serious inconvenience and loss.

Appearance of Complainant—Non-appearance of Defendant—Course of Proceedings.—If the complainant attend, and not the defendant, then one of several courses may be adopted. The defendant possibly may send an excuse for his non-attendance, alleging illness, attendance elsewhere in the discharge of some public duty, or some other excuse of a cogent character. In such a case, if the justices are satisfied that the excuse is *bonâ fide*, and not made for any sinister purpose, and that the ends of justice do not imperatively require them to proceed at once, they will probably adjourn the hearing to another day, directing notice of the adjournment or a fresh summons to be served upon the defendant, or, indeed, without any positive cause, if they can gather from the circumstances that the defendant's absence is accidental or unavoidable, and with no view to defeat the ends of justice, and that his appearance will be insured by an adjournment, they will do well to adjourn, bearing always in mind, that no case is so satisfactorily dealt with as when both of the litigant parties are before the court.

If, however, the defendant do not appear, and no excuse is offered or reasonably suggested for his absence, and the justices think the circumstances justify their proceeding, they may, in any case within the 11 & 12 Vict. c. 43, adopt one of two courses—namely, that of compelling the defendant's attendance by a warrant of apprehension, or that of proceeding to hear the case *ex parte*. Which of these two courses they will adopt is entirely in their discretion.

Warrant of apprehension on non-appearance of Defendant.—If the justices decide upon issuing a war-

rant for the apprehension of the defendant on his non-appearance upon being served with the summons, care must be taken that the statutable provisions are accurately complied with. By section 2 of the 11 & 12 Vict. c. 43, it is enacted—

That if the person so served with a summons as aforesaid shall not be and appear before the justice or justices at the time and place mentioned in such summons, and it shall be made to appear to such justice or justices, by oath or affirmation, that such summons was so served, what shall be deemed by such justice or justices to be a reasonable time before the time therein appointed for appearing to the same, then it shall be lawful for such justice or justices, if he or they shall think fit, upon oath or affirmation being made before him or them, substantiating the matter of such information or complaint to his or their satisfaction, to issue his or their warrant to apprehend the party so summoned, and to bring him before the same justice or justices of the peace in and for the same county, riding, division, liberty, city, borough or place, to answer to the said information or complaint, and to be further dealt with according to law.

Proof of Service of Summons before granting a Warrant.—It will be necessary, therefore, before granting a warrant to apprehend, on default of appearance to the summons, to ascertain in the first place, by oath or affirmation, that the summons has been served a reasonable time before the time appointed therein for the defendant's appearance. For that purpose the constable who served the summons should be sworn, and should be questioned as to the manner of the service. It has before been seen that by the 1st section of this statute the service may be either personal or by leaving the summons with some person for the defendant at his last or most usual place of abode. What is to be deemed a due service of the summons will be for the decision of the justices present. They will, however, require such evidence of service as will satisfy them, by a fair inference that the summons has in fact found its way to the hands of the defendant a reasonable time before the time of hearing. In *re Hopwood* (19 L. J. 197, M. C. ; 15 Q. B. 121), the

summons was served on one day to appear the next (only twenty-three hours intervening), and the Court of Queen's Bench refused to interfere upon that ground, the justices having, on the non-appearance of the defendant, adjudicated upon the case. In *re Williams* (21 L. J. 46, M. C.), a summons was left for the defendant at his house at ten o'clock in the morning, after he had left to go to his work, and he did not return home and receive it until eleven o'clock at night; the summons being for his appearance at the petty sessions, which were held eight miles away, at eleven o'clock the next day. Upon his non-attendance, the case was proceeded with in his absence and he was convicted. Upon an application to Mr. Justice Erle for a *certiorari* to bring up the conviction to be quashed on the ground of the insufficient service of the summons, his lordship said—

It is laid down in decided cases, that the justices below are the proper judges of what is a reasonable time. As a general rule, I should think that service at nine o'clock in the morning of one day to appear at eleven in the morning of the next day was a reasonable service.

In cases not within the 11 & 12 Vict. and those subsequently passed, care must be observed that any special directions contained in them with reference to the time at which the summons is to be served before the hearing are complied with, the above statute only applying to statutes already passed and expressly within its operation, and to such as may be passed containing no special provisions upon the subject.

Second Summons when first not served.—If the justices come to the conclusion that the defendant has not been duly summoned, either with reference to the service or the time of service, they should (if the complainant desire it) issue another summons, returnable and attendable at some future time.

Warrant to Apprehend—Deposition upon Oath of matter of Complaint.—If, however, the justice is satis-

fied that the service of the summons has been sufficient, he will then grant his warrant of apprehension, previously, however, taking upon oath or affirmation a deposition substantiating the matter of the information or complaint to his satisfaction. The form of the warrant is provided for by the 11 & 12 Vict. c. 43, and is as follows :—

WARRANT WHERE THE SUMMONS IS DISOBEYED.

— } To the constable of , and to all other peace officers
to wit. } in the said (county) of .

Whereas on last past, information was laid (or complaint was made) before the undersigned (one) of Her Majesty's justices of the peace in and for the said county of : for that A. B. (&c. as in the summons). And whereas I then issued my summons unto the said A. B., commanding him in Her Majesty's name to be and appear on at o'clock in the forenoon, at before such justices of the peace for the said county as might then be there, to answer to the said information (or complaint), and to be further dealt with according to law. And whereas the said A. B. hath neglected to be or appear at the time and place so appointed in and by the said summons, although it hath now been proved to me upon oath that the said summons hath been duly served upon the said A. B. These are therefore to command you in Her Majesty's name forthwith to apprehend the said A. B. and to bring him before some one or more of Her Majesty's justices of the peace in and for the said county, to answer to the said information (or complaint), and to be further dealt with according to law.

Given under my hand and seal this day of in the
year of our Lord , at , in the (county) aforesaid.
J. S. [L. S.]

By whom to be executed.—This warrant, when granted, will be delivered to the proper officer for execution, and it will remain in force until it is executed. Section 3 of the 11 & 12 Vict. c. 43, points out how it may be executed, and contains ample directions for its being backed.

Adjournment pending the execution of Warrant—Notice of time of Hearing.—When a warrant is thus

issued, the justice will adjourn the hearing until the defendant is apprehended; and, when afterwards the warrant is executed, the justice is to order him to be brought up at a certain time and place before him or others, of which said order the complainant or informant is to have due notice: (sect. 13.) The notice here mentioned will be given by the clerk to the justices and served by a constable.

Proceedings upon apprehension of Defendant.—Should the defendant be immediately apprehended, and the complainant is then ready to go into the case, it may at once be proceeded with. If, however, the complainant and his witnesses have left, or the defendant be not at once apprehended, the latter, on being brought before the justice granting the warrant, or some other justice or justices, is to be committed by him or them to the house of correction, or other prison or lock-up house or place of security, or (if he or they think fit) verbally to the custody of the party by whom he was apprehended, or to some other safe custody, and to order him to be brought up at a certain time and place before such justice or justices as shall then be there: (sect. 13.)

Upon the defendant being thus apprehended, the justices have no power to admit him to bail.

The following is the form of remand given by the statute:—

WARRANT TO REMAND DEFENDANT WHEN APPREHENDED.

— } To W. T., constable of , and to the keeper of the
to wit. } (House of Correction) at .

Whereas information was laid (or complaint was made) before the undersigned, (one) of Her Majesty's justices of the peace in and for the said (county) of , for that (g.c., as in the summons or warrant), and whereas the said A. B. hath been apprehended under and by virtue of a warrant upon such information (or complaint), and is now brought before me as such justice as aforesaid: these are therefore to command you the said constable, in Her Majesty's name, forthwith to convey the said A. B. to the (House of Correction) at , and there deliver him to the said keeper thereof, together with this precept; and I do

hereby command you the said keeper to receive the said A. B. into your custody in the said (*House of Correction*), and there safely keep him until next, the day of instant, when you are hereby commanded to convey and have him at , at o'clock in the forenoon of the same day, before such justices of the peace of the said (*county*) as may then be there, to answer to the said information (*or complaint*), and to be further dealt with according to law.

Given under my hand and seal this day of in the year of our Lord , at in the (*county*) aforesaid.
J. S. [L. S.]

The practice in cases not within the 11 & 12 Vict. c. 43.—The foregoing practice is that which is provided for by the 11 & 12 Vict. c. 43. In cases, however, which *are* not within its operation, the practice will often be different. In many of such, the statute upon the subject will be found to direct the course of proceeding ; but where there are no special provisions, it must be observed, in the first place, that the service of the summons must always be *personal*, and that there is no authority for substituting any other kind of service (*R. v. Simpson*, 12 Mod. 345; *Mason v. Barker*, 1 Car. & Kir. 307, n.; *R. v. Hall*, 6 D. & Ry. 84), except upon proceedings for non-payment of rates, in which it seems the summons may be served by leaving it at the defendant's residence; and in the second, as regards the issuing of a warrant of apprehension, either in the first instance or upon default upon service of a summons, if the statute upon the subject confers no specific powers either by express words or by strong implication, the justices will have no functions to grant it: (*R. v. Simpson*, 10 Mad. 341; 1 Stra. 44; Paley, 38.)

Hearing the case ex parte on non-appearance of the Defendant.—Should the defendant not appear, the justices may think that the case is not one which calls for their issuing a warrant against him ; and indeed, if they are satisfied that he is a respectable man, and is not likely ultimately to evade justice, and the

case itself is not one of any aggravation, or which, should the defendant be convicted, will result in his imprisonment, they should unquestionably forbear adopting such a course, and adopt the other alternative of proceeding to hear the case *ex parte*. This course they were always entitled to pursue under the law as it stood, independently of the 11 & 12 Vict. c. 43, upon proof of due service of the summons: and now, by section 2 of that statute, it is enacted—

That if, where a summons shall be so issued as aforesaid, and upon the day and at the place appointed in and by the said summons for the appearance of the party so summoned, such party shall fail to appear accordingly in obedience to such summons, then, and in every such case, if it be proved upon oath or affirmation to the justice or justices then present that such summons was duly served upon such party a reasonable time before the time so appointed for his appearance as aforesaid, it shall be lawful for such justice or justices of the peace to proceed *ex parte* to the hearing of such information or complaint, and to adjudicate thereon as fully and effectually, to all intents and purposes, as if such party had personally appeared before him or them in obedience to the said summons.

The 13th section contains a re-enactment of similar provisions.

Appearance of both Parties by themselves, their Counsel or Attorneys.]—If both parties appear, then the justices will enter into the case. As regards this subject, it will be observed, that under the 11 & 12 Vict. c. 43, either party may appear by his counsel or attorney; and if they do so, the justices are not to consider the personal absence of either the complainant or the defendant as a default. Upon this point section 13 says :—

If both parties appear, either personally or by their respective counsel or attorneys, before the justice or justices who are to hear and determine such complaint or information, then the said justice or justices shall proceed to hear and determine the same.

But although the appearance of either party by

counsel or attorney prevents any default in appearance, it would seem that the justices may still require the personal presence of the defendant, and if he refuse to come, may issue their warrant, as heretofore shown, to enforce his attendance. Cases may undoubtedly occur in which the ends of justice require the presence of the defendant, and in such, the justices should compel his attendance; but, in the majority of cases, his appearance by counsel or attorney will no doubt be deemed sufficient: (see the language of Lord Campbell in *Bessell v. Wilson*, 1 Ell. & Bla. 489; 22 L. J. 94, M. C. and this case cited, *post*.)

Adjournment of the Hearing..]—Upon the appearance of the parties, an adjournment may probably be solicited, particularly by the defendant, who possibly may allege his inability, from the short period intervening between the service of the summons and the time of appearance, to prepare his defence; or he may give some other substantial reason for a postponement of the hearing. In such a case, whether the application come from the complainant or defendant, the justices may adjourn the case. By section 16 of the 11 & 12 Vict. c. 43, very clear directions are given upon the subject of adjournments: by that section it is enacted—

That before or during such hearing of any such information or complaint it shall be lawful for any one justice, or for the justices present, in their discretion, to adjourn the hearing of the same to a certain time and place to be then appointed and stated, in the presence and hearing of the party or parties or their respective attorneys or agents then present, and in the mean time the said justice or justices may suffer the defendant to go at large, or may commit him to the common gaol or house of correction, or other prison or lock-up house or place of security in the county, riding, division, liberty, city, borough or place for which such justice or justices shall be then acting, or to such other safe custody as the said justice or justices shall think fit, or may discharge such defendant upon his entering into a recognizance, with or without surety or sureties, at the discretion of such justice or justices conditioned, for his appearance at the time and place to which such hearing or further hearing shall be adjourned.

How Defendant to be dealt with upon an Adjournment.—It will be seen from the foregoing, that if the justices consent to an adjournment they may deal with the defendant in one of several ways:—1st, they may permit him to go at large; 2nd, they may commit him for safe custody; or 3rd, they may discharge him upon his entering into a recognizance with or without surety or sureties. Which of these proceedings they will adopt is entirely for their own discretion; they will however, no doubt, in all cases avoid unnecessary restraint being imposed upon the defendant, particularly where, having been served with a summons, he has appeared in pursuance thereto at the proper time.

Adjournments, for what time.—Upon the subject of adjournments generally, it should be observed that notwithstanding the justices have a wide discretion as to the time, they should be careful, if the defendant is committed to custody, that the adjournment be for a reasonable time; since, should such time be ultimately deemed unreasonable, they may render themselves liable to an action of trespass, *Davis v. Capper* (10 B. & C. 28), in which Lord Tenterden observes, “the duty of a magistrate is to commit for a reasonable time, and if he commits for an unreasonable time he thereby does an act which he is not authorized by law to do.”

WARRANT OF COMMITTAL FOR SAFE CUSTODY DURING AN ADJOURNMENT OF THE HEARING.

— } To W. T., constable of , and to the keeper of the
to wit. } (House of Correction) at .

Whereas, on last past, information was laid (or complaint was made) before the undersigned, (one) of Her Majesty's justices of the peace in and for the said (county) of , for that (f.c., as in the summons) and whereas the hearing of the same is adjourned to the day of instant, at o'clock in the forenoon, at , and it is necessary that the said A. B. should in the mean time be kept in safe custody: these are therefore to command you the said constable in Her Majesty's name, forthwith to convey the said A. B. to the (House of Correction) at , and there deliver him into the custody of the

keeper thereof, together with this precept; and I hereby command you, the said keeper, to receive the said A. B. into your custody in the said (*House of Correction*), and there safely keep him until the day of instant, when you are hereby required to convey and have him the said A. B., at the time and place to which the said hearing is adjourned as aforesaid, before such justices of the peace for the said (*county*) as may then be there, to answer further to the said information (*or complaint*), and to be further dealt with according to law.

Given under my hand and seal this day of , in the year of our Lord , at in the (*county*) aforesaid.

J. S. [L. s.]

RECOGNIZANCE FOR THE APPEARANCE OF THE DEFENDANT WHERE THE CASE IS ADJOURNED OR NOT AT ONCE PROCEEDED WITH.

— } BE it remembered that on , A. B., of (*labourer*),
to wit. } and L. M., of (*grocer*), personally came before the undersigned, (*one*) of Her Majesty's justices of the peace in and for the said (*county*) of , and severally acknowledged themselves to owe to our sovereign Lady the Queen the several sums following (that is to say): the said A. B. the sum of , and the said L. M. the sum of , of good and lawful money of Great Britain, to be made and levied of their several goods and chattels, lands, and tenements respectively to the use of our said Lady the Queen, her heirs and successors, if he the said A. B. shall fail in the condition indorsed.

Taken and acknowledged the day and year first above mentioned.
at , before me, J. S.

The condition of the within-written recognizance is such that, if the said A. B. shall personally appear on the day of instant, at o'clock in the forenoon, at , before such justices of the peace for the said (*county*) as may then be there to answer further to the information (*or complaint*) of C. D. exhibited against the said A. B., and to be further dealt with according to law, then the said recognizance to be void, or else to stand in full force and virtue.

NOTICE OF SUCH RECOGNIZANCE TO BE GIVEN TO THE DEFENDANT AND HIS SURETY.

TAKE notice that you, A. B., are bound in the sum of , and you, L. M., in the sum of , that you, A. B., appear personally on , at o'clock in the forenoon, at , before such justices

of the peace for the said (*county*) as shall then be there, to answer further to a certain information (*or* complaint) of C. D., the further hearing of which was adjourned to the said time and place; and unless you appear accordingly, the recognizance entered into by you, A. B., and by L. M. as your surety, will forthwith be levied on you and him.

Dated this day of , 185 . J. S.

Practical mode of taking a recognizance.—The practical mode of taking the recognizance is this: the justice or his clerk states to the party bound, and his surety or sureties, the substance of the recognizance in the following manner :

You, A. B., you, C. D., and you, E. F., severally acknowledge yourselves to owe to our sovereign Lady the Queen the several sums following: that is to say, you, the said A. B., the sum of , you, the said C. D., the sum of , and you, the said E. F., the sum of , to be void if you (stating the condition of the written recognizance).

CHAPTER V.

THE HEARING.

The Number of Justices to hear Information..]—As a general rule, one justice alone is competent to hear and adjudicate upon a matter of summary conviction. If, however, the statute governing the proceedings direct that the case be heard before two or more justices, then it is imperative that such a number should actually be present at and take part in the hearing. If the particular statute be silent upon the subject, the 11 & 12 Vict. c. 44, s. 12, comes into operation, whereby it is enacted—

That every such complaint and information shall be heard, tried, determined and adjudged by one or two or more justice or justices of the peace as shall be directed by the act of Parliament upon which such complaint and information shall be framed, or such other act or acts of Parliament as there may be in that behalf; and if there be no such direction in any such act of Parliament, then such complaint or information may be heard, tried, determined and adjudged by any one justice of the peace for the county, riding, division, liberty, city, borough or place where the matter of such information shall have arisen.

Appearance of Complainant—Non-appearance of Defendant—Hearing ex parte..]—If, at the time appointed for the hearing, the complainant appear and is ready to proceed with his case, but the defendant do not appear, and the justices are satisfied that he has been duly served, as we have before seen (*ante*, p. 29), they may, if they think proper, proceed to hear the case *ex parte*. Supposing, therefore, that such a state of things exists as will warrant the justices in proceeding to a hearing in the absence of the defendant

(and herein they will naturally act with great caution, since, should it ultimately turn out that the defendant has really never been properly served, very serious consequences may ensue), they may proceed to the hearing of the case, but with the same care and deliberation as though the defendant were actually present, his absence in no way justifying the slightest departure from strict proof and the most formal and critical examination and inquiry. The course of proceeding will, in its various stages, be the same, whether the defendant appear or not, his absence in no way being an admission of the truth of the complaint or information, or justifying any intendment or presumption against him.

Appearance or Non-appearance of Parties after an Adjournment.]—Where there has been an adjournment, and the complainant does not appear, but the defendant does appear, the justices may dismiss the information or complaint, and discharge the defendant, unless for some reason they think proper again to adjourn to some other day, upon such terms as they shall think fit, upon which they may commit the defendant or discharge him, as we have before seen (*ante*, p. 47); and if afterwards he make default in appearing, his recognizance should be indorsed with a memorandum of his non-appearance, and be sent to the clerk of the peace to be estreated. Upon which the justices may again issue their warrant for his apprehension.

The certificate of the non-appearance of the defendant may be in the following form:—

CERTIFICATE OF NON-APPEARANCE TO BE INDORSED ON THE
DEFENDANT'S RECOGNIZANCE.

— } I HEREBY certify that the said A. B. hath not appeared at
to wit. } the time and place in the said condition mentioned, but
therein hath made default, by reason whereof the within written recognizance is forfeited.

J. S.

Mode of Proceeding if both Parties appear.]—If both parties appear, and no adjournment take place, the case

will be proceeded with in due order. Upon this point the 11 & 12 Vict. c. 43, s. 13, says:—

If both parties appear, either personally or by their respective counsel or attorneys, before the justice or justices who are to hear and determine such complaint or information, then the said justice or justices shall proceed to hear and determine the same.

It has before been shown, that notwithstanding this section directs the justices to proceed with the hearing upon the appearance of the defendant by his counsel or attorney, they may nevertheless insist upon having him personally present : (see *ante*, p. 46.)

Calling upon the Defendant to Plead.—The proceedings will be commenced by the clerk to the justices reading to the defendant the information, complaint or summons. This being done, he will be asked if he admits the complaint or not, or, in other words, whether he be guilty or not guilty. The 11 & 12 Vict. c. 43, prescribes the process to be followed under that act, and which may properly be adopted in every case. That section says—

That where such defendant shall be present at such hearing, the substance of the information or complaint shall be stated to him, and he shall be asked if he have any cause to show why he should not be convicted, or why an order should not be made against him, as the case may be ; and if he thereupon admit the truth of such information or complaint, and show no cause or no sufficient cause why he should not be convicted or why an order should not be made against him, as the case may be, then the justice or justices present at the said hearing shall convict him or make an order against him accordingly.

Caution in taking a Plea of Guilty.—Before, however, receiving a plea of guilty, it will be proper for the justices (particularly if the defendant be without legal assistance) to explain the legal definition and quality of the offence, pointing out the statutory enactment (when the offence is not of the commonest order) under which the defendant is charged, lest from ignorance or a misapprehension of the precise statutory provisions com-

prehending the offence, he may be induced to plead guilty to a charge with the legal merits of which he may be totally unacquainted. Indeed, it may be laid down as a general rule, that a confession of guilt, even in the shape of a plea of "guilty," made in ignorance of the requisites to constitute the offence, ought not to prevail: (*Rex v. Newton*, 2 Mo. C. C. 59.)

Taking Objections to the Information, Complaint, Summons or Warrant.—Before, however, pleading to the charge, it is competent to the defendant to take any objection he may be advised to the information, complaint, summons or warrant. If the proceedings be not governed by the 11 & 12 Vict. c. 43, and the justices are of opinion that the objection is well founded, they will give effect to their opinion by dismissing the complaint or information, there existing no powers on their part to correct or amend any errors, omissions or inaccuracies; but in such a case without costs, the justices not having at that stage any power to award them. Of the requisites necessary to constitute a good complaint or information sufficient has already been said (*ante*, p. 13.) Upon such a dismissal, the complainant may make a fresh complaint or lay another information.

If the case, however, be within the operation of the 11 & 12 Vict. c. 43, then errors, omissions or inaccuracies are not of such importance; for by section 1 it is enacted—

That no objection shall be taken or allowed to any information, complaint or summons for any alleged defect therein in substance or in form, or for any variance between such information, complaint or summons and the evidence adduced on the part of the informant or complainant at the hearing of such information or complaint as hereinafter mentioned; but if any such variance shall appear to the justice or justices present and acting at such hearing to be such that the party so summoned and appearing has been thereby deceived or misled, it shall be lawful for such justice or justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day.

Section 3 contains a similar provision with reference

to warrants. In cases, therefore, under the operation of this statute, the effect of any such defect is not very material, unless the justices are of opinion that the defendant has been deceived or misled, in which case they should, upon application, adjourn the hearing, imposing such terms as they think fit; or it should seem that the complainant might consent to abandon his information or complaint, as under the old law, and afterwards lay or make a fresh one.

It may here be observed, that in the discussion as to the sufficiency of the information, &c., and indeed upon the discussion of any question arising during the hearing, the same course of proceeding should be pursued as is observed by the superior courts: thus, upon an objection to the information, the defendant, his counsel or attorney, is first to be heard, then the complainant or his legal adviser in answer, and afterwards the former in reply, whereupon the justices will deliver their opinion; and it may here be mentioned, that in all cases before justices the decision is to be that of the majority, entire unanimity in no case being required, and the chairman having no casting vote.

Hearing the Case upon its Merits.]—If no preliminary objections be taken, or they be decided against the defendant, and he do not admit the truth of the information or complaint, the justices will proceed forthwith to hear the case upon its merits.

Ordering Witnesses out of Court.]—At this stage of the proceedings it is probable that the complainant or defendant will apply to have the witnesses kept out of court until called upon to give evidence, in which case it will be proper for the justices (though not compulsory upon them) to comply with the request, and direct that all the witnesses on both sides shall wait somewhere outside the court until called in. An exception, however, is always made in favour of medical witnesses (when their evidence is merely to medical facts), and to the respective attorneys of the parties. The defendant,

too, notwithstanding he is to be called as a witness, will have a right to remain, it being an act of justice to him that he should hear the case made against him, and which he has to answer. Should, however, any of the witnesses, in defiance of this order, remain in court, the justices will have no right to exclude their testimony, though such conduct will properly be the subject for strong observations, and will naturally weaken the strength of their evidence: (*Cook v. Nethercote*, 6 C. & P. 741; *Chandler v. Horn*, 2 Mo. & Rob. 423.)

Course of Proceeding—Addresses of the Parties.]—The course of proceeding in all cases within the operation of the 11 & 12 Vict. c. 43, is clearly directed by section 14; by which it is enacted—

That the said justice or justices shall proceed to hear the prosecutor or complainant and such witnesses as he may examine, and such other evidence as he may adduce in support of his information or complaint respectively, and also to hear the defendant and such witnesses as he may examine, and such other evidence as he may adduce in his defence, and also to hear such witnesses as the prosecutor or complainant may examine in reply, if such defendant shall have examined any witnesses or given any evidence other than as to his, the defendant's, general character; but the prosecutor or complainant shall not be entitled to make any observations in reply upon the evidence given by the defendant, nor shall the defendant be entitled to make any observations in reply upon the evidence given by the prosecutor or complainant in reply as aforesaid.

It will here be noticed that the section effects a great alteration in the old course of procedure, by taking away the right of reply both from the prosecutor and the defendant—in fact, limiting each party to one address.

It will not, however, escape notice that this practice, opposed as it is to that long established in the superior courts, will apply only to those cases which fall within the operation of the before-mentioned act. In informations and complaints, therefore, positively excepted out of the statute, or not falling within its scope, the long-established practice of the superior courts ought to prevail, which practice is similar to that prescribed by the

foregoing section, with this addition, that if the defendant call witnesses or give other evidence, the prosecutor or complainant has a general right of reply; or if he be in a situation to rebut the evidence adduced by the defendant by additional evidence of his own, he may at once adduce it, whereupon the defendant may again address the Bench upon such evidence, and the plaintiff has a general reply upon the whole case.

It will be the duty of the prosecutor or complainant in every case to substantiate his charge in the first instance. It is usual for him, or his attorney or counsel, to state shortly to the Bench the subject-matter of the case. If the prosecutor is himself a witness, he should not be permitted to address the Bench except upon oath, and then strictly to the facts, as it is desirable that the characters of advocate and witness should not be united in the same person; and this will apply even to his attorney, who, if he be also a witness, ought not to be permitted to address the Bench otherwise than upon oath as such witness: (*Stones v. Byron*, 16 L. J. 32, Q. B.; *Dunn v. Packwood*, 1 Bail Court Rep. 312; *Rex v. Price*, 2 B. & Ald. 606.)

Witnesses—Oaths and Affirmations.]—The witnesses will be called and examined in the order which the prosecutor thinks most convenient for the elucidation and proof of the case. Each witness, however, before he is permitted to depose to any facts, must either be sworn or make affirmation.

The form of oath is generally in the following form:—

The evidence you shall give touching this information (or complaint) shall be the truth, the whole truth, and nothing but the truth. So help you God.

In the case of *Quakers* or *Moravians*, by the 3 & 4 Will. 4, c. 49, they are allowed in all cases to make affirmation instead of oath, and the form given by that statute is the following:—

I, A. B., being one of the people called Quakers (or one of the per-

suasion of the people called Quakers, or of the united brethren called Moravians, *as the case may be*), do solemnly, sincerely and truly declare and affirm, &c.

By the 3 & 4 Will. 4, c. 82, an affirmation in lieu of oath is permitted to be made by the sect called *Separatists*, which is as follows :—

I, A. B., do, in the presence of Almighty God, solemnly, sincerely and truly affirm and declare that I am a member of the religious sect called Separatists, and that the taking of any oath is contrary to my religious belief, as well as essentially opposed to the tenets of that sect; and I do also, in the same solemn manner, affirm and declare, &c.

Jews are sworn upon the Old Testament.

By “The Common Law Procedure Act, 1854” (17 & 18 Vict. c. 125), it is by section 20 enacted—

That if any person called as a witness or required or desiring to make an affidavit or deposition, shall refuse or be unwilling, from alleged conscientious motives, to be sworn, it shall be lawful for the court or judge, or other presiding officer or person qualified to take affidavits or depositions upon being satisfied of the sincerity of such objection, to permit such person, instead of being sworn, to make his or her solemn affirmation or declaration in the words following: *videlicet*—

I, A. B., do solemnly, sincerely and truly affirm and declare that the taking of any oath is, according to my religious belief, unlawful; and I do also solemnly, sincerely and truly affirm and declare, &c.

Which solemn affirmation and declaration shall be of the same force and effect as if such person had taken an oath in the usual form.

This section, but for section 103 of the same act, would undoubtedly apply only to proceedings in the superior courts, but by the last-mentioned section it is enacted that the enactments in the above recited 20th section (*inter alia*) shall apply and extend to every court of civil judicature in England and Wales. Now, as the Court of Petty Sessions in many cases is a court of civil judicature, this clause will there apply. Thus, upon the hearing of a summons for an order of affiliation, or for orders of other kinds for the payment of money, inasmuch as these would not be criminal matters but proceedings purely of a civil nature, the court

would then be one of civil judicature, and so the clause will apply.

Disqualification of Witnesses.—Before the passing of recent statutes, particularly the 14 & 15 Vict. c. 99, questions sometimes arose as to the competency of certain interested parties as witnesses; the second section of that statute, however, clears away all the remaining disqualifications upon this subject, and enacts—

That on the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit, action or other proceeding in any court of justice, or before any person having by law or by consent of parties authority to hear, receive and examine evidence, the parties thereto and the persons in whose behalf any such suit, action or other proceeding may be brought or defended, shall, except as hereinafter excepted, be competent and compellable to give evidence either *vivâ voce* or by deposition, according to the practice of the court, on behalf of either or any of the parties to the said suit, action, or other proceeding.

But by the 3rd section it is enacted—

But nothing herein contained shall render any person who, in any criminal proceeding, is charged with the commission of any indictable offence or any offence punishable on summary conviction, competent or compellable to give evidence for or against himself or herself, or shall render any person compellable to answer any question tending to criminate himself or herself, or shall in any criminal proceeding render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband.

This last statute was afterwards amended by the 16 & 17 Vict. c. 83, which, except in criminal proceedings, enables husbands and their wives to give evidence on behalf of either of the parties. Except, therefore, in criminal proceedings, which include an offence punishable on summary conviction, the parties and their husbands or wives (as the case may be) are eligible as witnesses on either side, and even in criminal cases the disqualification only applies to the defendant.

Witnesses, when to be sworn.—It may here be observed that the proper course is to swear the witness *before* he gives his testimony, and not to take his evidence and then to swear him as to its truth. Any witness, whose testimony is received, ought, whilst giving it, to be under the solemn obligation of speaking the truth; and upon this subject, Abbott, C. J., in *Rex v. Kiddy* (4 Dow. & Ry. 734), observes—"Magistrates should understand that the oath is to be administered to the witness before he is examined, and not afterwards;" so, too, Bayley, J., remarks in the same case—"The answer of the witness is to be taken under the sanction of an oath; swearing him after his examination is taken is a very incorrect mode of proceeding, and it is hoped will be discontinued."

Evidence.—Upon the question generally of evidence, it may be here stated that the justices ought to insist in all cases upon the same regularity and strictness of proof as is required upon a trial at *nisi prius* or upon an indictment.

It is hardly within the scope of these pages to enter into the question—what are the rules of evidence? but, as a general guide, the following principles may conveniently be laid down upon the subject:—1st. No evidence ought to be admitted but such as is relevant to the question at issue. 2nd. The best evidence of which the case admits ought to be adduced if it can be had, and if not, then the next best, or *secondary* evidence, as it is usually termed, proof being first given of the impossibility of procuring the former, by its destruction or loss, or its being in the possession of the opposite party, who, on notice to produce it, has failed to do so. In addition to which it may be observed, that the *onus probandi* lies upon the prosecutor, and that a party is presumed to be innocent until the contrary is proved.

Course of Proceeding—Proof of the Complainant's and Defendant's cases—Witnesses, &c.—It will be for the complainant to prove his case in the way he thinks most convenient, calling his witnesses in such order as

he deems most conducive to the elucidation of the facts. As each witness is called, he will be fully examined in chief; then the defendant or his legal representative will have a right to cross-examine him, upon which the complainant may re-examine; the whole of the evidence, so far as it has any relevancy, being carefully taken down by the clerk to the justices. Thus will each witness be dealt with until the complainant has concluded his case. Upon this, if there be any doubt as to whether he has succeeded in establishing a *prima facie* case, the justices will deliberate; and if they come to the conclusion that none has been established, they will at once dismiss the complaint without calling upon the defendant for his defence. If, on the contrary, they are of opinion that such a case has been established, they will then proceed to hear the defendant; who, as before has been seen, has a right to address the Bench, either himself or by his counsel or attorney. Having so addressed them, he will either rely upon the insufficiency of the case as attempted to be established by the complainant, or he will attempt to answer it by positive testimony. In the latter case he will produce his witnesses and examine them in the order he deems best; and precisely the same rules will apply to the course of proceeding relative to his evidence as to that of the complainant. Should he have adduced evidence, the complainant may adduce additional evidence in reply; but, as has been shown, if the proceedings are governed by the 11 & 12 Vict. c. 43, neither party will have a right to address the Bench a second time; though, as has also been shown, such a rule does not apply where the proceedings are not governed by that statute: (*ante*, p. 55.)

Witnesses refusing to be Sworn or Examined.—If any of the witnesses unlawfully refuse to be examined, and the case be one within the operation of the 11 & 12 Vict. c. 43, ample coercive powers are conferred upon the justices. Thus, by section 7 it is enacted—

That if on the appearance of such person so summoned before the said last-mentioned justice or justices, either in obedience to the said summons

or upon being brought before him or them by virtue of the said warrant, such person shall refuse to be examined upon oath or affirmation concerning the premises, or shall refuse to take such oath or affirmation, or having taken such oath or affirmation shall refuse to answer such questions concerning the premises as shall then be put to him without offering any just excuse for such refusal, any justice of the peace then present and having there jurisdiction, may, by warrant under his hand and seal, commit the person so refusing to the common gaol or house of correction for the county, riding, division, liberty, city, borough or place where such person so refusing shall then be, there to remain and be imprisoned for any term not exceeding seven days, unless he shall in the meantime consent to be examined and to answer concerning the premises.

The following is the form of commitment given by the statute:—

COMMITMENT OF A WITNESS FOR REFUSING TO BE SWORN OR
TO GIVE EVIDENCE.

— } To W. T. constable of in the said (county) of and
to wit. } to the keeper of the (*House of Correction*) at .

Whereas information was laid (*or* complaint was made) before the undersigned (*one*) of Her Majesty's justices of the peace in and for the said (county) of , for that (*fc., as in the summons*); and one E. F., now appearing before me, such justice as aforesaid, on , at , and being required by me to make oath or affirmation as a witness in that behalf, hath refused so to do (*or* being now here duly sworn as a witness in the matter of the said information (*or* complaint) doth refuse to answer certain questions concerning the premises which are now here put to him, without offering any just excuse for such his refusal; these are therefore to command you, the said constable to take the said E. F. and him safely convey to the (*House of Correction*), at aforesaid, and there deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper of the said (*House of Correction*) to receive the said E. F. into your custody in the said (*House of Correction*), and there imprison him for such contempt for the space of days, unless he shall in the meantime consent to be examined and to answer concerning the premises; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal this day of in the
year of our Lord , at , in the (county) aforesaid

J. S. [L. s.]

[M. C.]

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When Justices have no Power to punish a Refractory Witness.—It must here be observed, that if the proceedings be not within the provisions of the 11 & 12 Vict. c. 43, this power of dealing with a refractory witness cannot be exercised; and, therefore, in such a case, unless the particular statute provides for the contingency, the justices have no power to punish a person attending before them as a witness for refusing to be sworn or affirmed, or, having taken such oath or affirmation, for refusing to answer the questions put to him.

Power to adjourn Hearing.—If, in the course of the hearing, any circumstances transpire which induce the justices to think that the ends of justice will be promoted by an adjournment of the hearing, they have ample powers to direct such an adjournment to take place. Section 16 of the 11 & 12 Vict. c. 43, points out the course to be adopted in such a case: (see *ante*, p. 46.)

The Assertion of a Claim of Right.—In the course of the hearing it may appear that the act complained of has been committed in the *bonâ fide* assertion of a claim of right; and when this is the case, the jurisdiction of the justices, as a general rule, will cease, and they should dismiss the information, leaving the complaining party to such other remedies as the law may have provided. In acting, however, upon an assertion of right, the justices will consider not only whether the case be one in which, from its nature, a claim of right is at all admissible, or operates as a defence, but also whether or not it is made *bonâ fide* or is merely *colourable*; for if it be made in a case in which it clearly is not applicable, or does not amount, even if well founded, to a legal defence, or is merely *colourable* and without any reasonable foundation, they will disregard it and proceed with the case. When, therefore (at whatever stage of the proceedings), the claim of right may be set up, it will be the duty of the justices to enter into the case so

far only as to satisfy themselves that the claim is either substantial or unfounded; and in this investigation their object will alone be to ascertain that the claim is a reasonable one, not that it can be ultimately successfully maintained. The class of cases in which a claim of right can be set up is necessarily small, and for the most part, will be confined to informations for trespass and assault, which sometimes involve a question of title to property. Whenever, therefore, such a question is involved in the information, the justices should at once abstain from further proceeding and leave the parties to arrange their claims or adjust their rights by some other course of proceeding, it being a maxim of invariable application as regards summary proceedings before justices, that whenever the title to property is in question, the exercise of a summary jurisdiction by them is ousted: (Paley on Convictions, p. 57; *Rex v. Wrottesley*, 1 B. & Ad. 648; *Reg. v. Dodson & ors.* 9 A. & E. 704; *Dale v. Pollard*, 10 Q. B. 504; 16 L. J. 322, Q. B.; *Reg. v. Edwards*, 26 L. T. Rep. 257; *Reg. v. Cridland*, 27 L. J. 28, M. C.)

Of Compromises by the Parties.—In a great variety of cases, determinable upon summary conviction, it is lawful for the litigant parties at any stage of the proceedings before judgment to enter into a compromise, and so supersede the necessity of a judicial adjudication, and, indeed, in cases in which the bench think that such a compromise would best fulfil the objects of the inquiry, it is usual for them to suggest it to the parties. Whenever, therefore, such a case arises, and the recommendation of the magistrate is likely to be responded to, opportunity will be given to accomplish the object, either by a temporary delay in the proceedings, or by an adjournment to a future day. As regards the class of cases wherein a compromise may take place, it would appear that it may be lawfully effected in any case in which the public are not involved; or, in other words, all those cases which involve damages to an injured party

for which he may maintain an action, and all cases determinable upon summary conviction, provided they be not of a public nature. Thus, common assaults, disputes between master and servant or apprentice, trespasses and the like, in which the mischief is confined to the complainant and does not involve the interests of the public or compromise the public peace, may lawfully be compromised. Upon this point the leading and last authority is *Kier v. Leeman* (6 Q. B. 308; 13 L. J. 259, Q. B.); also argued and affirmed in the Exchequer Chamber, (9 Q. B. 577; 15 L. J. 360, Q. B.) In the former case, Lord Denman says:—

We shall probably be safe in laying it down that the law will permit a compromise of all offences, though made the subject of a criminal prosecution, for which offences the injured party might sue and recover damages in an action. It is often the only manner in which he can obtain redress. But if the offence is of a public nature, no agreement can be valid that is framed on the consideration of stifling a prosecution for it. . . . In the present instance the offence is not confined to personal injury, but is accompanied with riot and obstruction of a public officer in the execution of his duty. These are matters of public concern, and therefore not legally the subject of a compromise.

So, too, in the last of these cases, in the Exchequer Chamber, Tindal, C. J., says:—

We have no doubt that in all offences which involve damages to an injured party for which he may maintain an action, it is competent for him, notwithstanding they are also of a public nature, to compromise or settle his private damage in any way he may think fit. It is said, indeed, that in the case of an assault he may also undertake not to prosecute on behalf of the public. It may be so, but we are not disposed to extend this any further. In the case before us, the offence is an assault coupled with a riot and the obstruction of a public officer; no case has said that it is lawful to compromise such an offence.

The justices have no power to *compel* the parties to arrange the dispute; and if, therefore, they decline to compromise, the case must be proceeded with. If, however, an arrangement is effected, the complaint will

be dismissed, a minute being entered of the manner in which the case has been disposed of.

Judgment of the Bench—Equal Division, &c.]—

When the case on both sides is concluded, the justices proceed to consider their judgment ; and in the performance of this duty they will properly consider themselves in the position of a jury in a criminal case, giving the defendant the benefit of all reasonable doubts. Unanimity of the justices is not required, and it is sufficient in any case that there be a majority. In the event of their being equally divided in opinion, it will be competent to them to adjourn the case to some other day, and call in the assistance of some other justice or justices and re-hear the case.

Practical Duties with reference to their Judgment.]

—The practical course to be adopted is set forth in the 14th section of the 11 & 12 Vict. c. 43, which enacts—

That the said justice or justices having heard what each party shall have to say as aforesaid, and the witnesses and evidence so adduced, shall consider the whole matter and determine the same, and shall convict or make an order upon the defendant, or dismiss the information or complaint, as the case may be; and if he or they convict or make an order against the defendant, a minute or memorandum thereof shall then be made, for which no fee shall be paid, and the conviction or order shall afterwards be drawn up by the said justice or justices in proper form under his or their hand and seal or hands and seals, and he or they, shall cause the same to be lodged with the clerk of the peace, to be by him filed among the records of the general quarter sessions of the peace; or if the said justice or justices shall dismiss such information or complaint, it shall be lawful for such justice or justices, if he or they shall think fit, being required so to do, to make an order of dismissal of the same, and shall give the defendant in that behalf a certificate thereof, which said certificate afterwards, upon being produced, without further proof shall be a bar to any subsequent information or complaint for the same matters respectively against the same party.

The judgment of the justices will be further considered in the next chapter.

CHAPTER VI.

THE JUDGMENT, EXECUTION, AND THEIR INCIDENTS.

The Judgment of the Justices.—The justices having agreed upon their decision, they give effect to it, if in favour of the complainant, by openly declaring that they convict or make an order upon the defendant; or, if in favour of the defendant, that they dismiss the information or complaint.

Of dismissing the Complaint or Information—Costs.—It will be convenient to consider the effect of dismissing the complaint. If the proceedings are governed by the 11 & 12 Vict. c. 43, the rights of the defendant are clearly defined by two or three of the sections of that statute; and, in the first place, as regards *costs*, it is by section 18 enacted—

That in cases where such justice or justices, instead of convicting or making an order as aforesaid, shall dismiss the information or complaint, it shall be lawful for him or them, in his or their discretion, in and by his or their order of dismissal, to award and order that the prosecutor or complainant respectively shall pay to the defendant such costs as to such justice or justices shall seem just and reasonable, and the sums so allowed for costs shall in all cases be specified in such conviction or order of dismissal as aforesaid, and the same shall be recoverable in the same manner and under the same warrants as any penalty or sum of money adjudged to be paid in and by such conviction or order is to be recoverable; and in cases where there is no such penalty or sum to be thereby recovered, then such costs shall be recoverable by distress and sale of the goods and chattels of the party, and in default of such distress, by imprisonment with or without hard labour, for any time not exceeding one calendar month, unless such costs shall be sooner paid.

And upon the same subject, in a later part of the same statute, we have, at section 26, a further enactment. This section enacts—

That where any information or complaint shall be dismissed with costs as aforesaid, the sum which shall be awarded for costs in the order for dismissal may be levied by distress on the goods and chattels of the prosecutor or complainant in manner aforesaid; and in default of distress or payment, such prosecutor or complainant may be committed to the house of correction or common gaol in manner aforesaid, for any time not exceeding one calendar month, unless such sum, and all costs and charges of the distress and of the commitment, and conveying of such prosecutor or complainant to prison (the amount thereof being ascertained and stated in such commitment), shall be sooner paid.

The following may be the form of dismissal :—

ORDER OF DISMISSAL OF AN INFORMATION OR COMPLAINT.

— } Be it remembered, that on information was laid (*or*
to wit. } complaint was made) before the undersigned (*one*) of Her
Majesty's justices of the peace in and for the said (*county*) of
for that (*g.c., as in the summons to the defendant*), and now at this day,
to wit, on , at , both the said parties appear before
me in order that I should hear and determine the said information (*or*
complaint), (*or the said A. B. appeareth before me, but the said C. D.,*
although duly called, doth not appear): whereupon the matter of the
said information (*or complaint*) being by me duly considered (it mani-
festly appears to me that the said information (*or complaint*) is not
proved, and*) I do therefore dismiss the same, and do adjudge that the
said C. D. do pay to the said A. B. the sum of for his costs
incurred by him in his defence in this behalf; and if the said sum for
costs be not paid forthwith (*or on or before*), I order that the
same be levied by distress and sale of the goods and chattels of the said
C. D., and in default of sufficient distress in that behalf, I adjudge the
said C. D. to be imprisoned in the (*House of Correction*) at , in
the said (*county*), (*and there kept to hard labour*) for the space of
 , unless the said sum for costs and all costs and charges of

* If the informant or complainant do not appear, these words may be omitted.

the said distress (and of the commitment and conveying of the said C. D. to the said House of Correction) shall be sooner paid.

Given under my hand and seal this day of , in the
year of our Lord , at , in the (county) aforesaid.
J. S. [L. S.]

Order of Dismissal—Discretion of Justices.—It will be observed that the making of this order of dismissal is quite discretionary with the justices; the 14th section saying—

If the said justice or justices shall dismiss such information or complaint, it shall be lawful for such justice or justices, if he or they shall think fit, being requested so to do, to make an order of dismissal of the same.

So that it is quite competent to them to refuse such order if they think fit. And the reason of this would seem to be, that if they make such an order they are then to give the defendant a certificate of having done so, which will be a bar to any subsequent information or complaint for the same matter against the same party; whereas, if no such order is made, no certificate can be granted, and so there is no bar to fresh proceedings; and cases may well be imagined in which it would be unfair to preclude an informant from laying a fresh information.

Awarding Costs to the Defendant.—If the justices determine upon dismissing the information or complaint, and upon making an order thereof, they have a discretion in awarding the defendant his costs. Should they in their judgment omit to say anything upon the subject, it will be proper for the defendant to draw their attention to it. The costs which they are empowered to award are to be such “as to such justice or justices shall seem fit and reasonable.” Such costs will properly include the expenses of the defendant’s witnesses, his attorney, if any, and also his counsel, if the Bench think that the case was of magnitude, importance or difficulty to warrant his retainer, together

with such fees as he has been called upon to pay to the clerk to the justices. These costs should be ascertained at the time and inserted in the order of dismissal.

Remedy for the Defendant's Costs.—In the event of the justices ordering the dismissal of the information or complaint with costs, such costs ought to be at once paid; and if not so paid, ulterior measures may be resorted to for the purpose of compelling payment. Before, however, adopting such measures, it will be right to serve the informant or complainant with a copy of the minute of such order, as directed by section 17; for although it admits of a doubt whether or not the concluding portion of that section applies to such a case, it is obviously within the objects contemplated by it, and the safer course, therefore, will be to adopt its provisions. The words are—

And in all cases where, by any act of Parliament, authority is given to commit a person to prison, or to levy any sum upon his goods or chattels by distress for not obeying any order of a justice or justices, the defendant shall be served with a copy of the minute of such order before any warrant of commitment or of distress shall issue in that behalf, and such order or minute shall not form any part of such warrant of commitment or of distress.

The following are the forms of warrants under such circumstances:—

WARRANT OF DISTRESS FOR COSTS UPON AN ORDER FOR DISMISSAL
OF AN INFORMATION OR COMPLAINT.

— } To the constable of _____, and to all other peace officers in
to wit. } the said (county) of _____.

Whereas, on _____ last past, information was laid (or complaint was made) before the undersigned, (one) of Her Majesty's justices of the peace in and for the said (county), for that (as in the order of dismissal); and afterwards, to wit, on _____, at _____, both parties appearing before me in order that I should hear and determine the same, and the several proofs adduced to me in that behalf being by me duly heard and considered, and it manifestly appearing to me that the said information

(or complaint) was not proved, I therefore dismissed the same, and adjudged that the said C. D. should pay to the said A. B. the sum of for his costs incurred by him in his defence in that behalf; and I ordered that if the said sum for costs should not be paid (*forthwith*), the same should be levied of the goods and chattels of the said C. D.; and I adjudged that in default of sufficient distress in that behalf, the said C. D. should be imprisoned in the (*House of Correction*) at , in the said county, (*and there kept to hard labour*) for the space of , unless the said sum for costs, and all costs and charges of the said distress and of the commitment and conveying of the said C. D. to the said (*House of Correction*), should be sooner paid (*); and whereas the said C. D., being now required to pay unto the said A. B. the said sum for costs, hath not paid the same or any part thereof, but therein hath made default: these are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said C. D., and if, within the space of days next after the making of such distress, the said last-mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to , the clerk of the justices of the peace for the division of , in the said (*county*), that he may pay and apply the same as by law directed, and may render the overplus (if any) on demand to the said C. D.; and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.

Given under my hand and seal this day of , in the
year of our Lord , at , in the (*county*) aforesaid.
J. S. [L. S.]

WARRANT OF COMMITMENT FOR WANT OF DISTRESS IN THE LAST
CASE.

— } To the constable of , and to the keeper of the (*House of*
to wit. } *Correction*) at , in the said (*county*) of .

Whereas (*gc., as in the last form to the asterisk(*), and then thus*); and whereas afterwards, on the day of in the year aforesaid, I, the said justice, issued a warrant to the constable of , commanding him to levy the said sum of , for costs, by distress and sale of the goods and chattels of the said C. D.; and whereas it

appears to me, as well by the return of the said constable to the said warrant of distress as otherwise, that the said constable hath made diligent search for the goods and chattels of the said C. D., but that no sufficient distress whereon to levy the sum above mentioned could be found: these are therefore to command you, the said constable of , to take the said C. D. and him safely convey to the (*House of Correction*) at aforesaid, and there deliver him to the said keeper thereof, together with this precept; and I do hereby command you, the said keeper of the said (*House of Correction*), to receive the said C. D. into your custody in the said (*House of Correction*), there to imprison him (*and keep him to hard labour*) for the space of , unless the said sum, and all costs and charges of the said distress (*and of the commitment and conveying of the said C. D. to the said House of Correction*), amounting to the further sum of , shall be sooner paid unto you the said keeper, and for your so doing this shall be your sufficient warrant.

Given under my hand and seal this day of , in the
year of our Lord , at , in the (*county*) aforesaid.
J. S. [L. S.]

As to Defendant's Costs when Proceedings not governed by the 11 & 12 Vict. c. 43.—If the proceedings are *not* governed by the 11 & 12 Vict. c. 43, the question of costs to the defendant will depend upon the particular statute under the provisions of which the information has been laid; and if this says nothing upon the subject, the justices will have no power to award them. By the 18 Geo. 3, c. 19, justices had a general power to award costs. That statute, however (as regards this subject), is repealed by the 36th section of the 11 & 12 Vict. c. 43; so that no general powers, other than those contained in the last-mentioned statute, now exist.

Certificate of Dismissal.—If the justices make an order dismissing the information or complaint, they are to give the defendant (if required) a certificate of that fact, which certificate will operate as a bar to any subsequent information or complaint for the same offence. The language of the 14th section of the 11 & 12 Vict. c. 43, after directing, as before has been shown (*ante*, p. 69),

that the information or complaint shall be dismissed, says that the justices—

Shall give the defendant in that behalf a certificate thereof, which said certificate afterwards, upon being produced, without further proof shall be a bar to any subsequent information or complaint for the same matters respectively against the same party.

Certificate when to be given.—Under the Common Assaults Act, 9 Geo. 4, c. 31, s. 27, the justices are empowered to grant a similar certificate, but in that case it is to be granted “*forthwith* ;” and, accordingly, where the certificate was not granted until two months afterwards, it was held not to constitute any defence : (*Reg. v. Robinson*, 12 A. & E. 672.) But, by the section upon the same subject in a later act, it will be seen that no particular limit is put upon the time within which the certificate is to be given. To avoid, however, any doubt or difficulty upon the subject, it should be applied for at once, when it will be the duty of the justices immediately to give it. The following is the form prescribed by the statute :—

I hereby certify that an information (*or complaint*) preferred by C. D. against A. B., for that (*fec., as in the summons*), was this day considered by me, one of Her Majesty’s justices of the peace in and for the (*county*) of _____, and was by me dismissed (*with costs*).

Dated this _____ day of _____, 185 . J. S.

Convicting or making an Order upon the Defendant—Costs.—If the justices come to the determination to convict or make an order upon the defendant (*ante*, p. 67), they are then empowered by section 18 of the 11 & 12 Vict. c. 43, to award costs. That section says—

That in all cases of summary conviction, or of orders made by a justice or justices of the peace, it shall be lawful for the justice or justices making the same, in his or their discretion, to award and order in and

by such conviction or order that the defendant shall pay to the prosecutor or complainant respectively such costs as to such justice or justices shall seem just and reasonable in that behalf; . . . and the sums so allowed for costs shall in all cases be specified in such conviction or order, or order of dismissal aforesaid, and the same shall be recoverable in the same manner and under the same warrants as any penalty or sum of money adjudged to be paid in and by such conviction or order is to be recoverable; and in cases where there is no such penalty or sum to be thereby recovered, then such costs shall be recoverable by distress and sale of the goods and chattels of the party, and in default of such distress by imprisonment, with or without hard labour, for any term not exceeding one calendar month, unless such costs shall be sooner paid.

Pronouncing Judgment—Form of.—In pronouncing their judgment against the defendant the justices will be careful to include in it all that they intend, being especially careful to keep strictly to the provisions of the particular statute or statutes upon the subject. They should distinctly state the amount of fine or the length of imprisonment, and whether with or without hard labour (if empowered to give it), together with the costs they adjudge.

Statutable Requisites of Judgment.—The justices will do well in pronouncing their judgment, to ascertain, by a reference to the act of Parliament upon which the proceedings are instituted, that they are pursuing strictly the requirements of the statute. In many cases the statute is imperative as to the penalty, and in such case the magistrates will have no discretion, but must pursue the legislative provisions, however harsh they may appear to be as applicable to the offence proved. In others the punishment is greatly in their discretion, whereby they are enabled so to apportion it as to meet the precise merits of the case.

Of Convicting of several Offences.—In cases not governed by the 11 & 12 Vict. c. 43, the information or complaint may be in respect of several offences, if

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they arise out of the same subject-matter and are not in relation to totally different enactments, as under the Game Laws (*R. v. Swallow*, 8 T. R. 284), and whether or not the defendant is liable to several penalties in respect of several acts, or to one penalty only, will depend upon the wording of the act of Parliament. If the various acts committed constitute, in fact, but one offence, only one penalty will be incurred: (*Crepps v. Durden*, 2 Cowp. 640; *R. v. Matthews*, 10 Mod. 26; *R. v. Lovett*, 7 T. R. 152; *Brooks v. Milliken*, 3 T. R. 509.) It would now, however, be much better that there should be a distinct information for each offence, and then there may be a distinct penalty for each. But if the proceedings *are* governed by that statute, then, as has been seen (*ante*, page 22), the complaint or information is to be for one matter or thing only.

Two or more Defendants—Joint or several Offences.]

—If there be two or more defendants, great additional care should be taken that the judgment be correct. If there be more than one defendant, and they are convicted of *one* offence, whether it be in its nature joint or several, as for an assault, a separate fine should be imposed upon each: (*Morgan v. Brown*, 5 A. & E. 515; 5 L. J. 77, M. C.)

When each Defendant to be fined to the full Amount.]

—Where, also, there are several defendants, it will be a matter of great importance to consider whether or not each party is liable to be fined to the full amount, or one fine only is to be imposed upon the whole. If the statute impose a particular penalty for a certain act, then, if it be committed by two or more, only one penalty is incurred: (*Rex v. Bleasdale*, 4 T. R. 809.) But if the penalty be obviously imposed upon each offender, or if the offence be of a several nature, so that the guilt of each is distinct though the act may be the same, the full penalty may be imposed upon each: (*Rex v. Hube and others*, 5 T. R. 542.) In *Rex v. Clarke* (Cowp.

610), Lord Mansfield laid down the rule very intelligibly. He says—

Where the offence is in its nature *single*, and cannot be severed, there the *penalty* shall be only *single*; because, though several persons may join in committing it, it still constitutes but *one* offence. But where the offence is in its nature *several*, and where every person may be *separately* guilty of it, there each offender is separately liable to the penalty, because the crime of each is distinct from the offence of the others, and each is punishable for his own crime. For instance, the offence created by stat. 1 & 2 Phil. & M. c. 12, is “impounding a distress in a wrong place.” One, two, three, or four may impound it wrongfully; still it is but *one* act of impounding it—it cannot be severed. It is but *one* offence, and therefore shall be satisfied by *one* forfeiture.

In the case of *Rex v. Dean* (12 Mee. & W. 39), Mr. Baron Alderson puts the point in a very clear light. His lordship says—

You must look at the statute to see whether every *person* is to be punished, or every *offence* to be punished. If every *offence* is to be punished, there is to be one penalty only, however large the number of persons that committed it; but if there are several penalties on each person, it is obviously otherwise.

Justices to make a Minute of Conviction or Order, &c.—Upon the justices determining upon convicting the defendant, or of making an order upon him, they are required by section 14 to make a minute or memorandum thereof, and the conviction or order itself is afterwards to be drawn up by them in proper form under hand and seal, and to be lodged by them with the clerk of the peace, to be by him filed among the records of the general quarter sessions of the peace.

Copy of the Minute of the Order to be served upon Defendant.—Under the 11 & 12 Vict. c. 43, before a defendant can be proceeded against under the judgment for not obeying an order of justices, a copy of the minute of it made by them at the time should be served upon him. This, it will be observed, does not

apply to convictions. The portion of the 17th section upon the subject is as follows :—

And in all cases where, by any act of Parliament, authority is given to commit a person to prison, or to levy any sum upon his goods or chattels, by distress, for not obeying any order of a justice or justices, the defendant shall be served with a copy of the minute of such order before any warrant of commitment or of distress shall issue in that behalf, and such order or minute shall not form any part of such warrant of commitment or of distress.

The execution of the Judgment.]—As regards the execution of the judgment of the justices, this will depend upon the special provisions of the statute under which the proceedings are taken. It may be that the statute directs that the defendant be imprisoned for a certain period, with or without hard labour, or that he do pay a sum of money, to be levied by distress, or, in default of distress, that he be imprisoned; and the payment may be either at once, or (as in orders of bastardy) at particular intervals extending over a period of time. Whatever may be the legislative enactment upon the subject, it should be carefully and strictly pursued.

If the statute direct the defendant to be imprisoned for a certain time, the 24th section of the 11 & 12 Vict. c. 43, in cases within its operation, directs as follows :—

That where a conviction does not order the payment of any penalty, but that the defendant be imprisoned, or imprisoned and kept to hard labour, for his offence, or where an order is net for the payment of money, but for the doing of some other act, and directs that in case of the defendant's neglect or refusal to do such act, he shall be imprisoned, or imprisoned and kept to hard labour, and the defendant neglects or refuses to do such act, in every such case it shall be lawful for such justice or justices making such conviction or order, or for some other justice of the peace for the same county, riding, division, liberty, city, borough or place, to issue his or their warrant of commitment, under his or their hand and seal, or hands and seals, and requiring the constable or constables to whom the same shall be directed to take and convey such defendant to the house of correction or common gaol for the same county, riding, division, liberty, city, borough or place as

the case may be, and there to deliver him to the keeper thereof, and requiring such keeper to receive such defendant into such house of correction or gaol, and there to imprison him and keep him to hard labour, as the case may be, for such time as the statute on which such conviction or order is founded as aforesaid shall direct; and in all such cases where, by such conviction or order, any sum for costs shall be adjudged to be paid by the defendant to the prosecutor or complainant, such sum may, if the justice or justices shall think fit, be levied by warrant of distress in manner aforesaid, and in default of distress the defendant may, if such justice or justices shall think fit, be committed to the same house of correction or common gaol in manner aforesaid, there to be imprisoned for any time not exceeding one calendar month, to commence at the termination of the imprisonment he shall then be undergoing, unless such sum for costs, and all costs and charges of the said distress, and also the costs and charges of the commitment and conveying of the defendant to prison, if such justice or justices shall think fit so to order, shall be sooner paid.

Apprehending Defendant if to be Imprisoned.—If, then, the statute directs the party to be imprisoned, the warrant for his commitment will at once be made out; and should he be present, the constable will immediately apprehend him and convey him to prison; if, however, he be not present, the constable who has the warrant will seek him out, and if he have removed into another jurisdiction he will get the warrant backed, as provided for by section 3, and thereupon he may in like manner be apprehended.

It will be convenient to consider separately, warrants as applicable to *convictions* and *orders*.

FIRST.

WARRANTS UPON CONVICTIONS.

WARRANT OF COMMITMENT ON A CONVICTION WHERE THE PUNISHMENT IS BY IMPRISONMENT.

— } To the constable of , and to the keeper of the (House
to wit. } of Correction) at , in the said (county) of .

Whereas A. B. late of (labourer), was this day duly convicted

before the undersigned, (one) of Her Majesty's justices of the peace in and for the said (county) of , for that (*stating the offence as in the conviction*), and it was thereby adjudged that the said A. B., for his said offence, should be imprisoned in the (*House of Correction*) at , in the said county (*and there kept to hard labour*), for the space of : these are therefore to command you, the said constable of , to take the said A. B. and him safely convey to the (*House of Correction*) at aforesaid and there to deliver him to the keeper thereof, with this precept; and I do hereby command you, the said keeper of the said (*House of Correction*), to receive the said A. B. into your custody in the said (*House of Correction*), there to imprison him (*and keep him to hard labour*) for the space of ; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal this day of , in the
year of our Lord , at , in the (county) aforesaid.
J. S. [L. S.]

WARRANT OF DISTRESS FOR COSTS UPON A CONVICTION WHERE
THE OFFENCE IS PUNISHABLE BY IMPRISONMENT.

— } To the constable of , and to all other peace officers
to wit. } in the said (county) of .

Whereas A. B., of (labourer), was on last past duly convicted before the undersigned (one) of Her Majesty's justices of the peace in and for the said county, for that (*stating the offence as in the conviction*), and it was thereby adjudged that the said A. B., for his said offence, should be imprisoned in the (*House of Correction*) at , in the said (county), (*and there kept to hard labour*) for the space of ; and it was also thereby adjudged that the said A. B. should pay to the said G. D. the sum of for his costs in that behalf; and it was thereby ordered that if the said sum of , for costs, should not be paid (*forthwith*), the same should be levied by distress and sale of the goods and chattels of the said A. B. and it was adjudged that in default of sufficient distress in that behalf the said A. B. should be imprisoned in the said (*House of Correction, and there kept to hard labour*) for the space of , to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs, and all costs and charges of the said distress, and of the commitment and conveying of the said A. B. to the said (*House of Correction*), should be sooner paid; and whereas the said A. B. being so convicted as aforesaid, and being

required to pay the said sum of for costs, hath not paid the same or any part thereof, but therein hath made default(*): these are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B., and if, within the space of

days next after the making of such distress, the said last-mentioned sum, together, with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you sell the goods and chattels so by you distrained, and do pay the money arising from such sale to , the clerk of the justices of the peace for the division of , in the said (county), that he may pay the same as by law directed, and may render the surplus (if any), on demand, to the said A. B.; and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.

Given under my hand and seal this day of , in the year of our Lord , at , in the (county) aforesaid.

J. S. [L. S.]

WARRANT OF COMMITMENT FOR WANT OF DISTRESS.

— } To the constable of , and to the keeper of the (House
to wit. } of Correction) at , in the said (county) of

Whereas (i.e., as in the last form to the asterisk (*), and then thus); and whereas afterwards, on the day of in the year aforesaid, I, the said J. S., issued a warrant to the constable of , commanding him to levy the said sum of , for costs, by distress and sale of the goods and chattels of the said A. B.; and whereas it appears to me, as well by the return of the said constable to the said warrant of distress, as otherwise, that the said constable had made diligent search for the goods and chattels of the said A. B., but that no sufficient distress whereon to levy the sum above mentioned could be found: these are therefore to command you, the said constable of , to take the said A. B. and him safely convey to the (House of Correction) at aforesaid, and there to deliver him to the keeper thereof, together with this precept: and I do hereby command you, the said keeper of the said (House of Correction), to receive the said A. B. into your custody in the said (House of Correction), and there to imprison him (and keep him to hard labour) for the space of , unless the said sum, and all costs and charges of the said distress (and of the commitment and conveying the said A. B. to the said House of Correction), amounting

to the further sum of _____, shall be sooner paid unto you, the said keeper; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal this _____ day of _____, in the
year of our Lord _____, at _____, in the (county) aforesaid.
J. S. [L. S.]

Imprisonment in Default of Payment of Fine.—

It may probably be, that the statute upon the subject directs that a fine shall be imposed in the first instance, and in default of payment, then that the defendant be imprisoned; in that event, the course of proceeding is pointed out by section 23 of the 11 & 12 Vict. c. 43, which enacts that in all cases where the statute, by virtue of which a conviction for a penalty or compensation or an order for the payment of money is made, makes no provision for such penalty or compensation or sum being levied by distress, but directs that if the same be not paid forthwith, or within a certain time therein mentioned or to be mentioned in such conviction or order, the defendant shall be imprisoned or imprisoned and kept to hard labour for a certain time, unless such penalty, compensation or sum be sooner paid, in every such case such penalty, compensation or sum shall not be levied by distress; but if the defendant do not pay the same, together with costs, if awarded, forthwith or at the time specified in such conviction or order for the payment of the same, it shall be lawful for the justice or justices making such conviction or order, or for any other justice of the peace, to commit him to prison, and to be kept to hard labour as the case may be, for the time named in such statute, unless the sum, together with the costs of conveying him to prison (if so ordered), be sooner paid.

WARRANT OF COMMITMENT UPON A CONVICTION FOR A PENALTY
IN THE FIRST INSTANCE.

— } To the constable of _____, and the keeper of the (House of
to wit. } Correction) at _____, in the said (county) of _____.

Whereas A. B., late of _____ (labourer), was on this day duly convicted before the undersigned (one) of Her Majesty's justices of the peace

in and for the said (*county*), for that (*stating the offence as in the conviction*); and it was thereby adjudged that the said A. B. for his said offence, should forfeit and pay the sum of (*£c., as in the conviction*), and should pay to the said C. D. the sum of for his costs in that behalf; and it was thereby further adjudged that if the said several sums should not be paid (*forthwith*) the said A. B. should be imprisoned in the (*House of Correction*) at , in the said (*county*), (*and there kept to hard labour*) for the space of , unless the said several sums (*and the costs and charges of conveying the said A. B. to the said House of Correction*) should be sooner paid; and whereas the time in and by the said conviction appointed for the said several sums hath elapsed, but the said A. B. hath not paid the same or any part thereof, but therein hath made default: these are therefore to command you, the said constable of , to take the said A. B. and him safely to convey to the (*House of Correction*) at aforesaid, and there to deliver him to the keeper thereof, together with this precept; and I do hereby command you, the said keeper of the said (*House of Correction*), to receive the said A. B. into your custody in the said (*House of Correction*), there to imprison him (*and keep him to hard labour*) for the space of , unless the said several sums (*and the costs and charges of conveying him to the said (House of Correction)*, amounting to the further sum of) shall be sooner paid; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal this day of , in the year of our Lord , at , in the (*county*) aforesaid.
(J. S.) [L. S.]

Levying Penalty by Distress.—Many statutes direct that, in the first instance, the penalty shall be levied by distress, and that the party is to be imprisoned only in default. Upon this subject the 19th section of the 11 & 12 Vict. c. 43, enacts—

That where a conviction adjudges a pecuniary penalty or compensation to be paid, or where an order requires the payment of a sum of money, and by the statute authorizing such conviction or order, such penalty or compensation or sum of money is to be levied upon the goods and chattels of the defendant by distress and sale thereof, and also in cases where, by the statute in that behalf, no mode of raising or levying such penalty, compensation or sum of money, or of enforcing the

payment of the same, is stated or provided, it shall be lawful for the justice or justices making such conviction or order, or for any justice of the peace of the same county, riding, division, liberty, city, borough or place, to issue his or their warrant of distress for the purpose of levying the same, which said warrant of distress shall be in writing under the hand and seal of the justice making the same; and if, after the delivery of such warrant of distress to the constable or constables to whom the same shall have been directed to be executed, sufficient distress shall not be found within the limits of the justice granting such warrant, then upon proof alone being made upon oath of the handwriting of the justice granting such warrant before any justice of any other county or place, such justice of such other county or place shall thereupon make an indorsement on such warrant, signed with his hand, authorizing the execution of such warrant within the limits of his jurisdiction, by virtue of which said warrant and indorsement the penalty or sum aforesaid and costs, or so much thereof as may not have been before levied or paid, shall and may be levied by the person bringing such warrant, or by the person or persons to whom such warrant was originally directed, or by any constable or other peace officer of such last-mentioned county or place, by distress and sale of the goods and chattels of the defendant in such other county or place.

It will be seen, from the foregoing section, that a warrant of distress may thus be issued against a defendant in cases, not only where the statute upon which the proceedings are founded expressly directs the penalty or sum to be levied by distress, but also where the statute makes no mention of the way in which the payment of the penalty or sum is to be enforced. It will also be seen that the section contains a provision for levying the distress beyond the limits of the justice who grants the warrant.

The following may be the form of the warrant.

WARRANT OF DISTRESS UPON A CONVICTION FOR A PENALTY.

— } To the constable of „ , and to all other peace officers in
to wit. } the said (county) of .

Whereas A. B., late of , (labourer), was on this day (or on last past) duly convicted before the undersigned, (one) of Her Majesty's justices of the peace in and for the said (county) of ,

for that (*stating the offence as in the conviction*), and it was thereby adjudged that the said A. B. should, for such his offence, forfeit and pay (*&c., as in the conviction*), and should also pay to the said C. D. the sum of for his costs in that behalf; and it was thereby ordered that if the said several sums should not be paid (*forthwith*), the same should be levied by distress and sale of the goods and chattels of the said A. B.; and it was thereby also adjudged, that in default of sufficient distress the said A. B. should be imprisoned in the (*House of Correction*) at , in the said (*county*), (*and there kept to hard labour*), for the space of , unless the said several sums and all costs and charges of the said distress, and of the commitment and conveying of the said A. B. to the said (*House of Correction*), should be sooner paid; and whereas the said A. B. being so convicted as aforesaid and being (*now*) required to pay the said sums of and hath not paid the same or any part thereof, but therein hath made default (*): these are therefore to command you in Her Majesty's name forthwith to make distress of the goods and chattels of the said A. B., and if within the space of days next after the making of such distress the said sums, together with the reasonable charges of taking and keeping the distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising by such sale unto , the clerk of the justices of the peace for the division of , in the said (*county*), that he may pay and apply the same as by law is directed, and may render the overplus (if any), on demand, to the said A. B.; and if no such distress can be found, that then you certify the same unto me, to the end that such further proceedings may be had thereon as to the law doth appertain.

Given under my hand and seal this day of , in the year of our Lord , at , in the (*county*) aforesaid.

J. S. [L. s.]

Backing Warrant.]—If it is found necessary to execute the foregoing warrant in another jurisdiction, the following may be the form of indorsement:—

INDORSEMENT IN BACKING A WARRANT OF DISTRESS.

— } Whereas proof upon oath hath this day been made before me,
to wit. } one of Her Majesty's justices of the peace in and for the
said county of , that the name of J. S. to the within warrant
subscribed is of the handwriting of the justice of the peace within men-

tioned: I do therefore authorize W. T., who bringeth to me this warrant, and all other persons to whom this warrant was originally directed or by whom the same may be lawfully executed, and also all constables and other peace officers of the said (*county*) of , to execute the same within the county of .

Given under my hand this day of , 185 .

J. B. ^

How Defendant to be dealt with pending Distress.—

When a warrant of distress thus issues in any case within the operation of the 11 & 12 Vict. c. 43, the justices are, by section 20, authorized either to let the defendant go at large, or verbally, or by a written warrant in that behalf, to order him to be kept and detained in safe custody until the return shall be made to such warrant of distress, unless the defendant shall give sufficient security, by recognizance or otherwise, to the satisfaction of the justice, for his appearance before him at the time and place appointed for the return of such warrant of distress, or before such other justice or justices for the same county, &c., as may be there.

The following may be the form of the recognizance :—

— } Be it remembered, that on A. B. (*labourer*) and L. M.
to wit. } of (*labourer*), personally came before me, the under-
signed, (*one*) of Her Majesty's justices of the peace in and for the said
(*county*) of , and severally acknowledged themselves to owe to
our Sovereign Lady the Queen the several sums following (that is to
say): the said A. B. the sum of , and the said L. M. the sum
of of good and lawful money of Great Britain, to be made and
seized of their several goods and chattels, lands and tenements respec-
tively, to the use of our said lady the Queen, her heirs and successors,
if he, the said A. B., shall fail in the condition indorsed.

Taken and acknowledged the day and year first above mentioned
at , before me. J. S.

The condition of the within-written recognizance is such, that if the
said A. B. shall personally appear on the day of instant,
at o'clock in the forenoon at , before such justices of the
peace for the said (*county*) as may then be there, being the day appointed
for the return of a certain warrant of distress this day issued by me, the

said justice, to levy on the goods and chattels of the said A. B., certain sums adjudged to be paid by him and to be so levied; and to be further dealt with according to law, then the said recognizance to be void, or else to stand in full force and virtue.

How, if no Goods found.—If, after the warrant of distress has issued, the constable is unable to find any goods of the defendant whereon to make the levy, he will make his return of the fact, and the justice will thereupon issue his warrant of commitment, first ascertaining the amount of additional costs incurred by the abortive distress and of the commitment and conveying the defendant to prison.

Goods should not be distrained, if insufficient.—When a warrant of distress has issued, and it is found that though there be some goods, there is not sufficient to satisfy the whole amount, the distress ought not to be levied, but the alternative commitment should be resorted to, since, should the goods be taken (though insufficient to satisfy the whole sum), the defendant cannot afterwards be committed in respect of the balance, as he cannot be made the subject of both punishments upon *one* conviction: (*Rex v. Wyatt*, 2 Ld. Raym. 1195, 1196.)

Commitment of Defendant, on no Distress found.—With reference to committing the defendant upon the failure of the warrant of distress, section 21 of the 11 & 12 Vict. c. 43, enacts as follows:—

That if, at the time and place appointed for the return of any such warrant of distress, the constable who shall have had the execution of the same shall return that he could find no goods or chattels, or no sufficient goods or chattels whereon he could levy the sum or sums therein mentioned, together with the costs of or occasioned by the levying of the same, it shall be lawful for the justice of the peace before whom the same shall be returned to issue his warrant of commitment under his hand and seal, directed to the same or any other constable, reciting the conviction or order shortly, the issuing of the warrant of distress and the return thereto, and requiring such constable to convey such defendant

[M. C.]

to the house of correction, or if there be no house of correction, then to the common gaol of the county, riding, division, liberty, city, borough or place for which such justice shall then be acting, and there to deliver him to the keeper thereof, and requiring such keeper to receive the defendant into such house of correction or gaol, and there to imprison him and keep him to hard labour, in such manner and for such time as shall have been directed and appointed by the statute on which the conviction or order mentioned in such warrant of distress was founded, unless the sum or sums adjudged to be paid, and all costs and charges of the distress, and also the costs and charges of the commitment and conveying of the defendant to prison, if such justice shall think fit so to order (the amount thereof being ascertained and stated in such commitment) shall be sooner paid.

If, therefore, the constable return that he has been unable to make a levy, the justice will proceed to commit the defendant.

CONSTABLE'S RETURN TO A WARRANT OF DISTRESS.

I, W. T., constable of _____, in the (county) of _____, do hereby certify to J. S., esquire, one of Her Majesty's justices of the peace for the said county, that by virtue of this warrant I have made diligent search for the goods and chattels of the within-named A. B., and that I can find no sufficient goods or chattels of the said A. B. whereon to levy the sums within mentioned.

Witness my hand, this _____ day of _____, 185 .

W. T.

The following may be the form of commitment:—

WARRANT OF COMMITMENT FOR WANT OF DISTRESS.

— } To the constable of _____, and to the keeper of the (House
to wit. } of Correction) at _____, in the said (county) of _____.

Whereas (f.c., as in the foregoing distress warrant (page 82), to the asterisk (*), and then thus:) and whereas afterwards, on the _____ day of _____, in the year aforesaid, I, the said justice, issued a warrant to the constable of _____, commanding him to levy the said sums of _____ and _____, by distress and sale of the goods and chattels of the said A. B.; and whereas it appears to me, as well by return of the said constable to the said warrant of distress as otherwise, that the said constable hath made diligent search for the goods and chattels of the

said A. B., but that no sufficient distress whereon to levy the sums above mentioned could be found: these are therefore to command you, the said constable of _____, to take the said A. B. and him safely to convey to the (*House of Correction*) at _____ aforesaid, and there deliver him to the said keeper, together with this precept; and I do hereby command you, the said keeper of the said (*House of Correction*), to receive the said A. B. into your custody in the said (*House of Correction*), there to imprison him (*and keep him to hard labour*) for the space of _____, unless the said several sums, and all costs and charges of the said distress (*and of the commitment and conveying of the said A. B. to the said House of Correction*), amounting to the further sum of _____, shall be sooner paid unto you, the said keeper; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal this _____ day of _____, in the
year of our Lord _____, at _____, in the (*county*) aforesaid.
J. S. [L. S.]

Commitment in the first instance, where Defendant confesses he has no Goods, or a Distress would be ruinous.—In cases where it is obvious that the defendant has no goods whereon to levy in the first instance, and where, therefore, it would be idle to issue a distress warrant, or where the issuing of a distress warrant would be ruinous to his family, the Legislature has provided for the issuing of a warrant of commitment in the first instance; the latter part of the 19th section of the 11 & 12 Vict. c. 43, thus enacts upon the subject:—

Provided always, that whenever it shall appear to any justice of the peace to whom application shall be made for any such warrant of distress as aforesaid that the issuing thereof would be ruinous to the defendant and his family, or wherever it shall appear to such justice, by the confession of the defendant or otherwise, that he hath no goods or chattels whereon to levy such distress, then and in every such case it shall be lawful for such justice, if he shall deem it fit, instead of issuing such warrant of distress, to commit such defendant to the house of correction, or if there be no house of correction within his jurisdiction then to the common gaol, there to be imprisoned, with or without hard labour, for such time and in such manner as by law such defendant

might be so committed in case such warrant of distress had issued and no goods or chattels could be found whereon to levy such penalty or sum and costs, aforesaid.

The following may be the form of the warrant in such a case :—

WARRANT OF COMMITMENT IN THE FIRST INSTANCE ON CONFESSION BY DEFENDANT OF THERE BEING NO GOODS, OR WHERE THE DISTRESS WOULD BE RUINOUS TO HIM.

— } To the constable of , and to the keeper of the (*House to wit.*) } of Correction) at , in the said (county) of .

Whereas A. B., late of the parish of , in the (county) of , was on this day duly convicted before the undersigned (one) of Her Majesty's justices of the peace in and for the said (county) of , for that he, the said A. B., did on the day of , at the parish of , in the (county) of aforesaid (*here set out the offence*) contrary to the form of the statute in such case made and provided; and it was thereby adjudged that the said A. B. should, for such his offence, forfeit and pay (*here state the penalty and compensation, if any*), and should also pay to the said C. D. the sum of for his costs in that behalf; and it was thereby ordered that if the said several sums should not be paid forthwith, then, inasmuch as it hath been made to appear to me that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family (*or that the said A. B. hath no goods or chattels whereon to levy the said sums by distress*), it was thereby also adjudged that the said A. B. should be imprisoned in the (*House of Correction*) at , in the said (county) of , (*and there kept to hard labour*) for the space of , unless the said several sums (*and costs and charges of commitment and conveying of the said A. B. to the said House of Correction*) should be sooner paid. And whereas the said A. B., being so convicted as aforesaid, and being now required to pay the said sums of and , hath not paid the same or any part thereof, but therein hath made default: these are therefore to command you, the said constable, to take the said A. B. and him safely convey to the (*House of Correction*) at aforesaid, and there to deliver him to the keeper thereof, together with this precept and I do hereby command you, the said keeper of the said (*House of Correction*), to receive the said A. B. into your custody in the said (*House of Correction*), there to imprison him (*and keep him to hard labour*) for

the space of , unless the said several sums (and the costs and charges of the commitment and conveying of him to the said (House of Correction), amounting to the further sum of) shall be sooner paid; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal this day of , in the year of our Lord at , in the (county) aforesaid.

J. S. [L. S.]

SECOND.

WARRANTS UPON ORDERS.

Judgment upon a Complaint—Order.—When justices, upon a complaint, give judgment in favour of the complainant, they give effect to it by making an *order*, which order, for the most part, is enforced by warrant as upon a conviction.

Peculiar Provisions as to Orders.—There are, however, some peculiar features connected with orders which do not present themselves with regard to convictions, and it has therefore been deemed advisable to consider them separately.

Minute of Order to be served upon Defendant.—By section 17 of the 11 & 12 Vict. c. 43, it is enacted—

That in all cases where by any act of Parliament authority is given to commit a person to prison or to levy any sum upon his goods and chattels by distress for not obeying any order of a justice or justices, the defendant shall be served with a copy of the minute of such order before any warrant of commitment or of distress shall issue in that behalf, and such order or minute shall not form any part of such warrant of commitment or of distress.

Before, therefore, a defendant upon an order can be proceeded against under the above statute for not obeying such order, he must be served with a copy of the minute of the order.

The section itself says nothing as to *how* the copy of the minute is to be served, but states that "the defendant shall be served;" but as the forms of the orders and of the warrants upon the orders under the statute direct, in the one case, the copy of the minute of the order to be "served upon the defendant either personally or by leaving the same for him at his last or most usual place of abode," and in the other recite that it has been so served, it would seem that leaving the copy of the minute for him at his last or most usual place of abode will be good service.

The following may be the form :—

MINUTE OF AN ORDER OF JUSTICES TO BE SERVED UPON THE
DEFENDANT.

At a petty-session of Her Majesty's justices of the peace for the
(county) of _____, holden at _____, in and for the (division) of _____,
on the _____ day of _____, 185 _____,

C. D. *Complainant*,

against

A. B. *Defendant*.

It is adjudged and ordered that the said A. B. shall forthwith (or on or before the _____ day of _____ instant), pay to the said C. D. the sum of _____, and also the sum of _____, for costs (to be recovered by distress), and in default the said A. B. to be imprisoned (*with hard labour*) for _____, unless sooner paid, with the costs of (distress and) conveyance to gaol.

Costs of Defendant, how obtained.]—If the justices dismiss the complaint with costs, the amount may be levied by distress, and in default of distress or payment, the complainant may be imprisoned, for any time not exceeding one calendar month, unless sooner paid, together with the costs of the distress and of his commitment and conveyance to gaol : (sect. 26.)

The forms of a warrant of distress for the *defendant's* costs upon a complaint, and of a commitment in default of distress, have before been given (*ante*, p. 70.)

When order made upon Defendant.]—If the justices

make an order upon the defendant which is not obeyed, and he has been served with a minute of it as above, a warrant may be granted either to distrain upon his goods or to commit him to prison according to circumstances.

When Order not for the payment of Money.—It may be that the order is not made for the payment of money, but for the not doing of some act, the refusal to do which renders the defendant liable to be imprisoned; in that case, sect. 24 of the 11 & 12 Vict. c. 43, enacts that where such order is not for the payment of money, but for the doing of some other act, and directs that, in case of the defendant's neglect or refusal to do such act, he shall be imprisoned, or imprisoned and kept to hard labour, and if the defendant neglects or refuses to do such act, in every such case it shall be lawful for the justice making such order, or some other justice, to issue his warrant of commitment of such defendant to prison, to be kept to hard labour, as the case may be, for such time as the particular statute may direct, and that, where in such case costs are adjudged, they may be levied by distress, and in default of distress the defendant may be committed for any time not exceeding one calendar month, to commence at the expiration of the imprisonment he is then undergoing, unless such costs, &c., shall be sooner paid.

Upon an order of this kind the warrant may be as follows :—

WARRANT OF COMMITMENT ON AN ORDER WHERE THE DISOBEY-
ING OF IT IS PUNISHABLE BY IMPRISONMENT.

— } To the constable of _____, and to the keeper of the (*House*
to wit. } of *Correction*), at _____, in the said (*county*) of _____.

Whereas on _____ last past, complaint was made before the under-
signed (*one*) of Her Majesty's justices of the peace in and for the said
(*county*) of _____, for that (*gc., as in the order*); and afterwards
to wit, on _____ the _____, the said parties appeared before me (*or as*
it may be in the order), and thereupon having considered the matter of
the said complaint, I adjudged the said A. B. to (*gc. as in the order*),

and that if upon a copy of the minute of that order being duly served upon the said A. B., either personally or by leaving the same for him at his last or most usual place of abode, he should neglect or refuse to obey the same, it was adjudged that in such case the said A. B. for such his last disobedience should be imprisoned in the (*House of Correction*) at _____, in the said county, (*and there kept to hard labour*) for the space of _____ (*unless the said order should be sooner obeyed*); and whereas it is now proved to me that after the making of the said order a copy of the minute thereof was duly served upon the said A. B., but he then refused (*or neglected*) to obey the same, and hath not as yet obeyed the said order: these are therefore to command you, the said constable of _____, to take the said A. B. and him safely to convey to the (*House of Correction*) at _____ aforesaid, and there deliver him to the said keeper thereof, together with this precept; and I do hereby command you, the said keeper of the said (*House of Correction*), to receive the said A. B. into your custody in the said (*House of Correction*), there to imprison him (*and keep him to hard labour*) for the space of _____, and for so doing this shall be your sufficient warrant.

Given under my hand and seal this _____ day of _____, in the
year of our Lord, 185 _____, at _____, in the (*county*) aforesaid.
J. S. [L. S.]

**WARRANT OF DISTRESS FOR COSTS UPON AN ORDER, WHERE THE
DISOBEYING OF THE ORDER IS PUNISHABLE WITH IMPRISON-
MENT.**

_____ } To the constable of _____, and to all other peace officers, in
to wit. } the (*county*) of _____.

Whereas, on _____ last past, complaint was made before the under-
signed, (*one*) of Her Majesty's justices of the peace in and for the said
(*county*), for that (*ſc.*, *as in the order*), and afterwards, to wit, on _____,
at _____, the said parties appeared before me as such justice as afore-
said (*or as it may be in the order*), and thereupon having considered the
matter of the said complaint I adjudged the said A. B. to (*ſc.*, *as in the*
order), and that if, upon a copy of the minute of that order being served
upon the said A. B., either personally or by leaving the same for him at
his last or most usual place of abode, he should neglect or refuse to obey
the same, I adjudged that in such case the said A. B., for such his dis-
obedience, should be imprisoned in the (*House of Correction*) at _____, in
the said (*county*), (*and there kept to hard labour*) for the space
of _____, unless the said order should be sooner obeyed; and I thereby

also adjudged the said A. B. to pay to the said C. D. the sum of _____, for his costs in that behalf; and I ordered that if the said sum for costs should not be paid (*forthwith*), the same should be levied of the goods and chattels of the said A. B. (and in default of sufficient distress in that behalf, I thereby adjudged that the said C. D. should be imprisoned in the said (*House of Correction*) (*and there kept to hard labour*) for the space of _____, to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs, and all costs and charges of the said distress and of the commitment and conveying of the said A. B. to the said (*House of Correction*) be sooner paid); and whereas, after the making of the said order, a copy of the minute thereof was duly served upon the said A. B., but the said A. B. did not then pay, nor hath he paid the said sum of _____ for costs, or any part thereof, but therein hath made default: these are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B., and if, within the space of _____ days next after the making of such distress, the said last-mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and to pay the money arising from such sale to _____, the clerk of the justices of the peace for the division of _____, in the said (*county*), that he may pay the same as by law directed, and may render the overplus, if any, on demand, to the said A. B.; and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.

Given under my hand and seal this _____ day of _____, in the
year of our Lord _____, at _____, in the (*county*) aforesaid.
J. S. [L. S.]

WARRANT OF COMMITMENT ON AN ORDER IN THE FIRST INSTANCE.

_____ } To the constable of _____, and to the keeper of the (*House of*
to wit. } *Correction*) at _____, in the (*county*) aforesaid.

Whereas on _____ last past, complaint was made before the under-
signed (*one*) of Her Majesty's justices of the peace in and for the said
(*county*) of _____, for that (*fr., as in the order*), and afterwards, to
wit on _____ at _____, the parties appeared before (*me*) the said
justice (*or as it may be in the order*), and thereupon having considered
the matter of the said complaint, I adjudged the said A. B. to pay
to the said C. D. the sum of _____, on or before the _____ day

of , then next, and also to pay to the said C.D. the sum of for his costs in that behalf; and I also thereby adjudged that if, the said several sums should not be paid on or before the day of then next, the said A. B. should be imprisoned in the (*House of Correction*) at , in the said (*county*), (*and there kept to hard labour*) for the space of , unless the said several sums (and the costs and charges of conveying the said A. B. to the said *House of Correction*) should be sooner paid. And whereas the time in and by the said order appointed for the payment of the said several sums of money hath elapsed, but the said A. B. hath not paid the same or any part thereof; but therein hath made default. These are therefore to command you, the said constable of , to take the said A. B., and him safely convey to the said (*House of Correction*) at aforesaid, and there to deliver him to the keeper thereof, together with this precept; and I do hereby command you the said keeper of the said (*House of Correction*) to receive the said A. B. into your custody in the said (*House of Correction*), there to imprison him (*and keep him to hard labour*) for the space of ; unless the said several sums (*and the costs and charges of conveying him to the said House of Correction, amounting to the further sum of*), shall be sooner paid to you the said keeper; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal this day of in the year of our Lord , at , in the (*county*) aforesaid.
J. S. [L. S.]

The warrant of commitment for want of distress will be the same upon an *order* as upon a *conviction*, which see, *ante*, page 86.

Defendant to be released on Payment of Sums ordered.]

—By the 28th section of the 11 & 12 Vict. c. 43, it is enacted that in all cases where any person, against whom a warrant of distress shall issue, shall pay or tender to the constable the sum or sums mentioned in it, together with the amount of expenses of such distress up to the time of payment or tender, the constable is to cease from further executing it. And in all cases, also, in which any person shall be imprisoned for non-payment of any penalty or other sum, he may pay or cause to be paid to the keeper of the prison the sum mentioned

in the warrant of commitment, together with the amount of the costs, charges and expenses, if any, also mentioned in the warrant, and the said keeper is thereupon to discharge him, provided he is in custody for no other matter.

One Justice may issue Warrants of Distress or Commitment.]—In all cases of summary proceedings before justices out of sessions, one justice, though not one of those who heard the case, may, after the case is heard, issue all warrants of distress or commitment : (sect. 29, 11 & 12 Vict. c. 43.)

Appeals to the Sessions.]—The question of appeals to the sessions will be considered in the chapters devoted to the Courts of Special and Quarter Sessions. It may here, however, be observed, that as many acts of Parliament which deal with matters to be adjudicated upon by summary conviction, contain very stringent provisions relative to appeals, such as the 7 & 8 Vict. c. 101 (Bastardy), which requires the notice of appeal to be given within forty-eight hours after the adjudication and making of the order, and the 7 & 8 Geo. 4, c. 53 (Excise), which requires the party appealing to give notice of his intention “immediately” after the giving of the judgment, and that, too, to a variety of parties, the importance of a foreknowledge of what is requisite upon the subject, by a reference to the statute itself, and of being prepared at the hearing to give such notice, cannot be too strongly enforced.

Commitment for Perjury.]—It will be well here to draw attention to the powers which justices possess under the 14 & 15 Vict. c. 100, of directing a prosecution for perjury committed before them. The 19th section of this statute contains full and comprehensive directions upon the subject, and enables any justice of the peace, in special or petty sessions, in case it shall appear to him that any person has been guilty of wilful

and corrupt perjury in any evidence given before him, to direct such person to be prosecuted for such perjury in case there shall appear to him a reasonable cause for such prosecution, and to commit such person until the next assizes for the county, and to bind over parties to prosecute, &c.

To whom Penalties and Money to be Paid, and how Accounted for.—By the 31st section of the 11 & 12 Vict. c. 43, directions are given as to whom penalties paid or levied are to be paid, and it enacts that in any warrant of distress the constable or other person to whom it is directed is to be ordered to pay the amount to the clerk of the division : and if any person, who is convicted in a penalty or ordered to pay a sum of money, shall pay it to the constable, such constable is forthwith to pay it to such clerk. It further directs that if the party is committed to prison upon any conviction or order for non-payment of a penalty or sum of money, he may pay the same to the gaoler, who is forthwith to pay the same to the clerk as before mentioned. The section then directs that all sums so received by the clerk are forthwith to be paid by him to the party or parties to whom the same respectively are to be paid, according to the directions of the statute upon which the proceedings have been taken ; and, if there are no such directions, then the clerk is to pay the amount to the treasurer of the county, &c., for which the committing justice shall have acted. And every clerk and gaoler is to keep a true account of all moneys received by him, of whom received, when received, and to whom and when paid, for which a schedule is given (*see post*), and once a month he is to render a fair copy of every such account to the justices of the division assembled in petty-sessions under a penalty of forty shillings ; and the clerk is to send or deliver every return so made to the clerk of the peace for the county, &c., in which his division happens to be, at such times as the Court of Quarter Sessions shall order.

might be so committed in case such warrant of distress had issued and no goods or chattels could be found whereon to levy such penalty or sum and costs, aforesaid.

The following may be the form of the warrant in such a case :—

WARRANT OF COMMITMENT IN THE FIRST INSTANCE ON CONFESSION BY DEFENDANT OF THERE BEING NO GOODS, OR WHERE THE DISTRESS WOULD BE RUINOUS TO HIM.

— } To the constable of , and to the keeper of the (*House*
to wit. } *of Correction*) at , in the said (*county*) of .

Whereas A. B., late of the parish of , in the (*county*) of , was on this day duly convicted before the undersigned (*one*) of Her Majesty's justices of the peace in and for the said (*county*) of , for that he, the said A. B., did on the day of , at the parish of , in the (*county*) of aforesaid (*here set out the offence*) contrary to the form of the statute in such case made and provided; and it was thereby adjudged that the said A. B. should, for such his offence, forfeit and pay (*here state the penalty and compensation, if any*), and should also pay to the said C. D. the sum of for his costs in that behalf; and it was thereby ordered that if the said several sums should not be paid forthwith, then, inasmuch as it hath been made to appear to me that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family (*or that the said A. B. hath no goods or chattels whereon to levy the said sums by distress*), it was thereby also adjudged that the said A. B. should be imprisoned in the (*House of Correction*) at , in the said (*county*) of , (*and there kept to hard labour*) for the space of , unless the said several sums (*and costs and charges of commitment and conveying of the said A. B. to the said House of Correction*) should be sooner paid. And whereas the said A. B., being so convicted as aforesaid, and being now required to pay the said sums of and , hath not paid the same or any part thereof, but therein hath made default: these are therefore to command you, the said constable, to take the said A. B. and him safely convey to the (*House of Correction*) at aforesaid, and there to deliver him to the keeper thereof, together with this precept and I do hereby command you, the said keeper of the said (*House of Correction*), to receive the said A. B. into your custody in the said (*House of Correction*), there to imprison him (*and keep him to hard labour*) for

the space of _____, unless the said several sums (and the costs and charges of the commitment and conveying of him to the said (House of Correction), amounting to the further sum of _____) shall be sooner paid; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal this _____ day of _____, in the year of our Lord _____ at _____, in the (county) aforesaid.

J. S. [L. S.]

SECOND.

WARRANTS UPON ORDERS.

Judgment upon a Complaint—Order.—When justices, upon a complaint, give judgment in favour of the complainant, they give effect to it by making an *order*, which order, for the most part, is enforced by warrant as upon a conviction.

Peculiar Provisions as to Orders.—There are, however, some peculiar features connected with orders which do not present themselves with regard to convictions, and it has therefore been deemed advisable to consider them separately.

Minute of Order to be served upon Defendant.—By section 17 of the 11 & 12 Vict. c. 43, it is enacted—

That in all cases where by any act of Parliament authority is given to commit a person to prison or to levy any sum upon his goods and chattels by distress for not obeying any order of a justice or justices, the defendant shall be served with a copy of the minute of such order before any warrant of commitment or of distress shall issue in that behalf, and such order or minute shall not form any part of such warrant of commitment or of distress.

Before, therefore, a defendant upon an order can be proceeded against under the above statute for not obeying such order, he must be served with a copy of the minute of the order.

CHAPTER VII.

THE FORMAL CONVICTION AND ORDER.

As any judgment of the justices, pronounced with reference to a conviction or an order, must be recorded in a formal shape, and as the record itself, should their judgment be called in question, will be the evidence, and frequently the *conclusive* evidence, of the legality of their proceedings, it is desirable here to consider the rules of law and practice which at the present time regulate and affect such instrument.

General Forms of Convictions and Orders.]—Until the passing of the 11 & 12 Vict. c. 43, these instruments were subject to rules of construction and interpretation of a very nice and critical character; so much so, that justices were often made to suffer in damages for formal defects, even where their course of proceedings was wholly free from blame or censure. From time to time a body of abstruse legal learning had been applied to these records, the only practical effect of which was to render the office of a justice of the peace one of considerable risk and difficulty, and to give to crafty and undeserving litigants an opportunity, not only of defeating the ends of justice, but of making a profit out of their frauds and delinquencies. As far as well can be, this evil is now remedied by the 11 & 12 Vict. c. 43, which, by supplying a body of forms for all cases within its operation, has rendered the drawing up of a conviction or an order a matter of little difficulty or risk. True it is, that, inasmuch as this statute excepts from its operation a variety of cases, the forms given by it are not of universal application; but it will be found, that in each of these excepted

cases the Legislature has provided others, which, by being followed, protect the justices, so that, practically, the evils to which reference has been made no longer exist in any case.

Necessity for Care in Convictions, &c.—It must not, however, be supposed that the drawing up of a conviction or an order is now merely a matter of form, or that precedents given by statute can be made use of, even in cases to which they clearly apply, without the exercise of prudence and care. The great and almost only difficulty upon the subject will consist in showing, upon the face of the record, that such an offence has been committed as warrants the judgment. Nor let it be supposed that this is a light or trivial matter. Occasionally justices are required to convict, or make an order, with reference to transactions of a very technical and involved description; and it often happens that an act, innocent in itself, becomes criminal when accompanied by peculiar or unusual circumstances. In such cases the difficulty will consist in rightly setting out the offence; for however guilty in fact the party may have been, if the conviction fail to set out such an offence as justifies the judgment of the justices, they may expose themselves to consequences of a very embarrassing nature.

Conviction or Order, when to be Drawn up.—It has before been seen (*ante*, p. 65), that by section 14 of the 11 & 12 Vict. c. 43, the justices, if they convict or make an order against the defendant, are to make a minute or memorandum thereof, and the conviction or order is afterwards to be drawn up by them in proper form, under their hands and seals, and to be lodged with the clerk of the peace, to be by him filed among the records of the quarter-sessions.

The formal conviction or order, therefore, need not be, and in practice seldom is, drawn up at the time of the hearing; but a minute being carefully made and entered, it is afterwards, as convenience may suggest

or circumstances require, prepared by the justices' clerk and executed by the justices.

In cases of great difficulty or novelty, and where litigation is likely to arise, it is not unusual to have these documents prepared by counsel. As, however, this is a cost which must be borne by the particular parties incurring it, and cannot be charged upon the defendant, it will be sustained only where there is a well grounded reason for additional care.

Application of Forms given by the 11 & 12 Vict. c. 43.]

—It will be convenient at once to consider such convictions and orders as are within the operation of the 11 & 12 Vict. c. 43 ; and here it must be observed, that, by that statute, the forms given are made to apply not only to all cases where, by the particular statute, no form is given, but in all cases of statutes previously passed, whether any particular form is given or not. The 17th section of the above act, which directs this, is as follows :—

That in all cases of conviction, where no particular form of such conviction is or shall be given by the statute creating the offence regulating the prosecution for the same, and upon all cases of conviction upon statutes hitherto passed, whether any particular form of conviction has been therein given or not, it shall be lawful for such justice or justices who shall so convict to draw up his or their conviction, on parchment or on paper, in such one of the forms of conviction in the schedule to this act contained as shall be applicable to such case, or to the like effect; and where an order shall be made, and no particular form of order is or shall be given by the statute giving authority to make such order, and in all cases of orders to be made under the authority of any statutes hitherto passed, whether any particular form of order shall therein be given or not, it shall be lawful for the justice or justices by whom such order is to be made, to draw up the same in such one of the forms of orders in the schedule to this act contained as may be applicable to such case, or to the like effect.

It will be convenient to consider separately these two instruments.

FIRST.

CONVICTIONS.

CONVICTION FOR A PENALTY TO BE LEVIED BY DISTRESS, AND
IN DEFAULT OF DISTRESS, IMPRISONMENT.

— } Be it remembered, that on the day of , in the
to wit. } year of our Lord , at , in the said (county),
A. B. is convicted before the undersigned, (one) of Her Majesty's justices
of the peace for the said (county), for that he, the said A. B., &c.,
(stating the offence and the time and place when and where committed),
and I adjudge the said A. B., for his said offence, to forfeit and pay the
sum of (stating the penalty, and also the compensation, if any),
to be paid and applied according to law, and also to pay to the said
C. D. the sum of , for his costs in that behalf; and if the said
several sums be not paid forthwith (or on or before next), (*) I
order that the same be levied by distress and sale of the goods and chat-
tels of the said A. B., and in default of sufficient distress (*) I adjudge
the said A. B. to be imprisoned in the (House of Correction) at ,
in the said (county), (there to be kept to hard labour) for the space
of , unless the said several sums, and all costs and charges of the
said distress (and of the commitment and conveying of the said A. B. to
the said House of Correction), shall be sooner paid.

Given under my hand and seal the day and year first above
mentioned, at , in the (county) aforesaid.

J. S. [L. S.]

CONVICTION FOR A PENALTY, AND IN DEFAULT OF PAYMENT,
IMPRISONMENT.

— } Be it remembered, that on the day of , in the
to wit. } year of our Lord , at , in the said (county),

* Or where the issuing of a distress warrant would be ruinous to the
defendant or his family, or it appears that he has no goods whereon to
levy a distress, then instead of the words between the asterisks (**) say,
“ then, inasmuch as it hath now been made to appear to me (that the
issuing of a warrant of distress in this behalf would be ruinous to the
said A. B. and his family,” or “ that the said A. B. hath no goods or
chattels whereon to levy the said sums by distress), I adjudge,” as above
to the end.

A. B. is convicted before the undersigned, (one) of Her Majesty's justices of the peace for the said (county), for that (he the said A. B., &c., *stating the offence, and the time and place when and where committed*); and I adjudge the said A. B., for his said offence, to forfeit and pay the sum of (stating the penalty, and the compensation, if any), to be paid and applied according to law, and also to pay to the said C. D. the sum of for his costs in that behalf; and if the said several sums be not paid forthwith (or on or before next, I adjudge the said A. B. to be imprisoned in the (*House of Correction*) at , in the said (county), (and there be kept to hard labour) for the space of unless the said several sums (and the costs and charges of conveying the said A. B. to the said House of Correction) shall be sooner paid.

Given under my hand and seal the day and year first above mentioned, at , in the (county) aforesaid.

J. S. [L. S.]

CONVICTION WHEN THE PUNISHMENT IS BY IMPRISONMENT.

— } Be it remembered, that on the day of , in the
to wit. } year of our Lord , in the said (county), A. B. is convicted before the undersigned (one) of Her Majesty's justices of the peace for the said (county), for that (he the said A. B., &c., *stating the offence, and the time and place when and where committed*); and I adjudge the said A. B., for his said offence, to be imprisoned in the (*House of Correction*) at , in the said (county), (and there kept to hard labour) for the space of ; and I also adjudge the said A. B. to pay the said C. D. the sum of for his costs in this behalf, and if the said sum for costs be not paid forthwith (or on or before next), then (*) I order that the said sum be levied by distress and sale of the goods and chattels of the said A. B., and in default of sufficient distress in that behalf (*) I adjudge the said A. B. to be imprisoned in

* Or where the issuing of a distress warrant would be ruinous to the defendant or his family, or it appears that he has no goods whereon to levy a distress, then instead of the words between the asterisks (* *), say, "inasmuch as it hath now been made to appear to me (that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family," or "that the said A. B. hath no goods or chattels whereon to levy the said sum for costs by distress), I adjudge," &c.

the said (*House of Correction*), (*and there kept to hard labour*) for the space of , to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs shall be sooner paid.

Given under my hand and seal the day and year first above mentioned, at , in the (*county*) aforesaid.

J. S. [L. S.]

SECOND.

ORDERS.

ORDER FOR PAYMENT OF MONEY TO BE LEVIED BY DISTRESS, AND IN DEFAULT OF DISTRESS, IMPRISONMENT.

— } Be it remembered, that on , complaint was made before
to wit. } the undersigned, (*one*) of Her Majesty's justices of the
peace in and for the said (*county*) of , for that (*stating the facts
entitling the complainant to the order, with the time and place when and
where they occurred*), and now at this day, to wit, on , at ,
the parties aforesaid appear before me, the said justice (*or the said C. D.*
appears before me, the said justice), but the said A. B., although duly
called, doth not appear by himself, his counsel or attorney, and it is now
satisfactorily proved to me, on oath, that the said A. B. has been duly
served with the summons in this behalf which required him to be and
appear here at this day, before such justices of the peace for the said
(*county*) as should now be here, to answer the said complaint, and to be
further dealt with according to law; and now having heard the matter
of the said complaint, I do adjudge the said A. B. (to pay to the said
C. D. the sum of forthwith, *or on or before* next, *or as the
statute may require*), and also to pay the said C. D. the sum of for
his costs in this behalf; and if the said several sums be not paid
forthwith (*or on or before* next), (*) I hereby order that the
same be levied by distress and sale of the goods and chattels of the said
A. B.; and in default of sufficient distress in that behalf, (*) I adjudge

* Or where the issuing of a distress warrant would be ruinous to the defendant or his family, or it appears that he has no goods whereon to levy a distress, then instead of the words between the asterisks (* *), say, "then inasmuch as it hath now been made to appear to me (that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family)," or "that the said A. B. hath no goods or chattels whereon to levy the said sums by distress), I adjudge," &c.

the said A. B. to be imprisoned in the (*House of Correction*) at in the said (*county*) (*and there kept to hard labour*) for the space of , unless the said several sums, and all costs and charges of the said distress (*and of the commitment and conveying of the said A. B. to the said House of Correction*) shall be sooner paid.

Given under my hand and seal, this day of , in the year of our Lord , at , in the (*county*) aforesaid.
J. S. [L. S.]

ORDER FOR PAYMENT OF MONEY, AND IN DEFAULT OF
PAYMENT, IMPRISONMENT.

— } Be it remembered, that on , complaint was made
to wit. } before the undersigned (*one*) of Her Majesty's justices of the peace in and for the said (*county*) of , for that (*stating the facts entitling the complainant to the order, with the time and place when and where they occurred*); and now at this day, to wit, on , at , the parties aforesaid appear before me the said justice (or the said C. D. appears before me the said justice, but the said A. B., although duly called, doth not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me on oath that the said A. B. has been duly served with the summons in this behalf which required him to be and appear here on this day before such justices of the peace for the said (*county*), as should now be here, to answer the said complaint, and to be further dealt with according to law); and now, having heard the matter of the said complaint, I do adjudge the said A. B. (to pay to the said C. D. the sum of forthwith, or on or before next, or as the statute may require), and also to pay to the said C. D. the sum of for his costs in this behalf; and if the said several sums be not paid forthwith (or on or before next), I adjudge the said A. B. to be imprisoned in the (*House of Correction*) at in the said (*county*) (*there to be kept to hard labour*) for the space of , unless the said several sums (*and the costs and charges of conveying the said A. B. to the said House of Correction*), shall be sooner paid.

Given under my hand and seal, this day of , in the year of our Lord , at , in the (*county*) aforesaid.
J. S. [L. S.]

ORDER FOR ANY OTHER MATTER, WHERE THE DISOBEYING OF IT IS PUNISHABLE WITH IMPRISONMENT.

— } Be it remembered, that on , complaint was made before
to wit. } the undersigned, (one) of Her Majesty's justices of the
peace in and for the said (county) of , for that (*stating the facts
entitling the complainant to the order, with the time and place when and
where they occurred*); and now at this day, to wit, on , at
the parties aforesaid appear before me, the said justice (or the said C. D.
appears before me, the said justice), but the said A. B., although duly
called, doth not appear by himself, his counsel or attorney, and it is
now satisfactorily proved to me, on oath, that the said A. B. has been
served with the summons in this behalf which required him to be and
appear here at this day before such justices of the peace for the said
county as should now be here, to answer to the said complaint, and to
be further dealt with according to law; and now having heard the
matter of the said complaint, I do therefore adjudge the said A. B. to
(*here state the matter required to be done*), and if, upon a copy of a
minute of this order being served upon the said A. B., either personally
or by leaving the same for him at his last or most usual place of abode,
he shall neglect or refuse to obey the same, in that case I adjudge the
said A. B. for such his disobedience, to be imprisoned in the (*House of
Correction*) at , in the said (county), (*there to be kept to hard
labour*) for the space of (unless the said order be sooner obeyed,
if the statute authorize this); and I do also adjudge the said A. B. to
pay to the said C. D. the sum of for his costs in this behalf;
and if the said sum for costs be not paid forthwith (*or on or be-
fore next*), I order the same to be levied by distress and sale of
the goods and chattels of the said A. B. and in default of sufficient
distress in that behalf, I adjudge the said A. B. to be imprisoned in
the said (*House of Correction*) (*and there kept to hard labour*) for the
space of , to commence at and from the termination of his im-
prisonment aforesaid, unless the said sum for costs shall be sooner paid.

Given under my hand and seal this day of , in the
year of our Lord , at in the (county) aforesaid.

J. S. [L. s.]

With precedents thus given for convictions, orders,
and warrants, few difficulties need present themselves
with reference to these documents. Care, however,

must still be observed in drawing them up; and it will be convenient, therefore, in this place, to direct attention to those points which are still open to observation, and which may be likely to produce embarrassment or doubt: and—

FIRST.

Of Convictions and Orders.

Care required in using Statutable Forms.—Few of the forms of these instruments given by the various statutes furnish a complete record of the transaction they are intended to perpetuate. The *description* of the offence itself is almost invariably left a blank, to be filled up according to circumstances; and the importance of great care in this particular is the more obvious, when it is recollected that even a form given by act of Parliament has been deemed no protection where it does not itself show some ingredient necessary to make up the offence: (*Fletcher v. Calthrop*, 14 L. J. 49, M. C.; 6 Q. B. 840; 1 New Sess. Cas. 542.) Upon this subject Lord Denman, C. J., in *Reg. v. Johnson*, 8 Q. B. 102; 15 L. J. 7, M. C., thus expresses himself:—

It might be supposed that when a statute gives a form of conviction that form, when adopted, must necessarily be good; but the court has found itself bound to impose some restrictions upon that general proposition; for if an act contains a description of an offence, and the circumstances which are required to constitute it, and if the form given in the statute does not contain all the particulars which, by the provisions of the statute, go to make out the offence, it becomes impossible for the court to say that the offence has been committed.

See also *R. v. Hazell*, 13 East, 139; *R. v. Ridgway*, 5 B. & Ald. 527; *R. v. Askew*, 20 L. J. 241, M. C.; *in re Turner*, 9 Q. B. 80; 15 L. J. 140, M. C.

Statement of adjudication of Penalty and Costs.—Considerable care will be required in the statement of the adjudication of the penalty and the award of costs. Where the application of the penalty is fixed by statute,

it may be directed to be distributed or paid according to law: (*R. v. Scale*, 8 East, 574; *Rex v. Thompson*, 2 T. R. 18.) Where, however, any *discretion* is given to the justices as to the amount of the penalty or the parties to receive it, these facts should be specifically ascertained and set out: (*Rex v. Dimpsey*, 2 T. R. 96; *Rex v. Symonds*, 1 East, 189; *Rex v. Smith*, 5 M. & S. 133; *Griffith v. Harries*, 2 M. & W. 335; *R. v. Glos-sop*, 4 B. & Ald. 616.)

Amount of Costs to be ascertained by Justices.—In all cases the amount of costs should be ascertained by the justices at the time of the conviction or order being pronounced, and the sum should be inserted in these instruments: (*Selwood v. Mount*, 1 Q. B. 726; *Lock v. Selwood*, 1 Q. B. 736; *Reg. v. Clark*, 5 Q. B. 887.)

Necessity for Care in drawing up Convictions or Orders.—In drawing the formal conviction or order, reference should uniformly be had to the act of Parliament upon which the proceedings are founded, since, without clearly comprehending the statutory provisions upon the subject, no certainty exists that the legal requirements of the Legislature have been strictly pursued.

The practical directions as to the drawing up of the conviction and order have before been mentioned (*ante*, p. 65), and it has been seen that by section 14 of the 11 & 12 Vict. c. 43, the justices, upon convicting or making an order, are to make a minute or memorandum of it at the time, and the conviction or order itself is afterwards to be drawn up by them in proper form under their hands and seals and lodged with the clerk of the peace, to be by him filed among the records of the general quarter sessions.

Defendant entitled upon Application to a Copy of the Conviction.—Upon application, the defendant is entitled to a copy of the conviction, and this the justices have no right to refuse (*R. v. Midlam*, 3 Burr. 1720.) But they are not bound by such copy, for they may

[M. C.]

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make a more formal or accurate one when they return it to the clerk of the peace: (*Chaney v. Payne*, 1 Q. B. 712, 722; *Selwood v. Mount*, 1 Q. B. 729.) The parties, however, are not entitled to copies of the depositions or evidence of the witnesses.

Forms of Conviction may be modified—Application of forms to all Cases.—Although, by adopting the forms (whenever they apply) as given by the 11 & 12 Vict. c. 43, security against fatal errors will to a great extent be insured, such forms should nevertheless not be servilely followed, but should be modified so as to be adapted to meet the peculiarities of any particular case. The courts, however, will always endeavour to uphold the proceedings of justices where it is obvious they have been actuated by a desire to follow the directions of the Legislature. In the case of *Ex parte Allison* (24 L. T. 117), a party had been committed upon a conviction under the 16 & 17 Vict. c. 30, s. 1, for an aggravated assault, which section gives jurisdiction to “two justices of the peace sitting at a place where the petty sessions are usually held,” &c. The warrant under which the defendant was committed to prison was in conformity with the form given by the 11 & 12 Vict. c. 43 (*ante*, p. 78), and the objection was, that the warrant did not show that the convicting justices were “sitting at a place where the petty sessions are usually held;” and it was contended, that as the conviction was upon a statute passed subsequently to the 11 & 12 Vict. c. 43, that statute afforded no protection, and that the forms provided by it were not a guide. The court, however, were clear and unanimous in opinion that this was an untenable objection. POLLOCK, C.B., says:—“The argument is, that at the time when the statute passed it was sufficient that the magistrate acting should be one in and for the county, and that the form given was intended for that state of things; but that in the last year a statute passed of a highly penal nature, and that to guard against any abuse of justice, the hearing must take place in petty

sessions, and in the very locality, and he argues that the form of the warrant should show these facts. That argument produces no impression upon my mind. The statute says that the commitment may be in that form or to the like effect. I do not think that the magistrates were at all called upon to reason upon the subject of why these forms were given. They find the form given, and they adopt it. This is the form in the statute, and is therefore free from objection." So, too, Mr. Baron PARKE observes:—"The late act of Parliament says, if the justices conform with the forms given it shall be sufficient, otherwise the act would be nothing but a trap. The forms clearly apply to all statutes. The form of commitment in the act shows what the justices are to set out; and it appears to me that this warrant fully complies with the form."

SECOND.

WARRANTS OF COMMITMENT.

General Forms of Warrants.]—Much that has been said respecting convictions and orders is applicable to warrants of commitment. These instruments, which formerly were surrounded by a vast body of nice and critical learning, are now comparatively free from technicalities, since the 11 & 12 Vict. c. 43, has supplied a body of forms which may be used in all cases of convictions or orders made under the provisions of that statute; and by section 32 it is expressly enacted—

That the several forms in the schedule to this act contained, or forms to the like effect, shall be deemed good, valid, and sufficient in law.

These forms of warrants, therefore, are applicable to all cases of convictions or orders (not expressly excepted out of the act) where no form of conviction or order is given, and to all cases of convictions and orders in cases of statutes previously passed. In most of the excepted cases forms are supplied by the respective

statutes, so that in hardly any case is it likely that any substantial difficulty will present itself in framing these instruments : (see *Ex parte Allison*, ante, p. 110.) It may be well, however, in this place, to guard against some possible errors, by drawing attention to a few decisions upon the subject.

Correct statement of Offence, &c.—The same observations which were made with reference to the importance of correctly stating in the conviction the offence of which the defendant was convicted, and the adjudication as to the penalty and costs, may be repeated with reference to warrants of commitment ; and in these respects the warrant must correspond with the commitment : (*Rogers v. Jones*, 3 B. & C. 409 ; *Wood v. Fenwick*, 10 M. & W. 195 ; *Charter v. Greame*, 18 L. J. 73, M. C.)

Statement of time and manner of Imprisonment.—Care, also, must be observed that the warrant is exact as to the time and manner of imprisonment, and the conditions upon which the defendant may be discharged : (*Groome v. Forrester*, 5 M. & S. 314.) Where, therefore, a party was committed to prison for three months, and the warrant omitted the day of the month upon which it was granted, the imprisonment was held to be bad ; (*Re Fletcher*, 13 L. J. 16, M. C.)

Duration of Warrant—Not to be executed on a Sunday.—The warrant of commitment, unless it be made returnable at a certain time, remains in force until it is executed, however long, if the magistrate granting it be living. It cannot, however, be executed on a Sunday : (*Rex v. Myers*, 1 T. R. 265.)

It may here be observed, that by some statutes, as the 7 & 8 Geo. 4, c. 29, s. 73 (the Larceny Act), 7 & 8 Geo. 4, c. 30 s. 39 (the Malicious Mischief Act), 9 Geo. 4, c. 31 (the Act relating to Offences against the Person), the 1 & 2 Will. 4, c. 32, s. 45 (the Game Act), and others, it is provided that no warrant of commitment

on a conviction upon such act shall be held to be void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there is a good and valid conviction to sustain the same. But as there is no *general* enactment upon the subject, a good conviction will not help a bad warrant where the statute providing for the proceedings does not contain such a clause : (*Wickes v. Clutterbuck*, 2 Bing. 483.)

Backing Warrants.]—By section 3 of the 11 & 12 Vict. c. 43, ample provisions are enacted for backing a warrant of commitment.

Defendant has a right to a Copy of the Warrant.]—The defendant, if taken into custody upon a warrant of commitment, has a right, under the Habeas Corpus Act, 31 Car. 2, c. 2, s. 5, to a copy of the warrant under which he is detained, and a heavy penalty is imposed for neglecting to give such copy within a certain time after demand.

When Defendant may be apprehended in the first instance without a Summons or Warrant.]—It may be well here to remark that, although the 11 & 12 Vict. c. 43, provides for the issuing of a summons or warrant in the first instance to compel the appearance of the defendant, it must not be imagined that this statute operates as a repeal of those provisions in many statutes authorizing the apprehension of offenders found in the commission of an offence punishable summarily, or where a conviction may be made on view.

Demanding a case for the Court above.]—By the 20 & 21 Vict. c. 43, a right is conferred upon either party in an information or complaint, if dissatisfied with the determination of the justices as being erroneous in point of law, to require them to state a case for the opinion of one of the superior courts at Westminster. As, however, the provisions of this statute are somewhat numerous and special, it has been thought advisable to treat of them in a separate chapter, which will be found in a subsequent portion in this volume.

CHAPTER VIII.

CHARGES OF INDICTABLE OFFENCES.

THE INFORMATION, SUMMONS, WARRANT, ETC.

WHILST considering the practice of the Court of Petty Sessions, it will be convenient to treat of that extensive jurisdiction which justices possess with reference to the hearing of charges of a criminal nature with a view to committal to trial ; for although these proceedings are not necessarily transacted at petty sessions, taking place frequently before a single justice, and occasionally at his private residence, yet as, in fact, they most frequently are conducted at the sitting of justices in petty sessions, it will be well to consider them as appertaining to that court.

Jurisdiction of Justices over Indictable Offences.—The powers of justices to hear charges of offences punishable upon indictment are of the most extensive description, embracing, with very few exceptions, every kind of indictable felony or misdemeanor. The practice upon the subject is now entirely regulated by the 11 & 12 Vict. c. 42, entitled, "*An Act to facilitate the performance of the duties of Justices of the Peace out of Sessions within England and Wales with respect to Persons charged with Indictable Offences.*" This statute provides a code of proceeding upon the subject which entirely obviates any difficulty in this branch of the practice of magistrates' courts.

First proceeding to bring an Offender to Justice—Preferring a Bill before the Grand Jury.—If an indictable felony or misdemeanor has been committed, the injured party, or he upon whom naturally devolves the duty of instituting criminal proceedings, will take the necessary steps to bring the offender to justice by initiating an inquiry into the facts. This may be done either by preferring a bill of indictment at the quarter sessions or assizes without a preliminary hearing before a justice, or by having the party apprehended and taken before a magistrate with a view to his committal to trial. There is no rule of law which prohibits a prosecutor from going in the first instance before the grand jury. But there are many very cogent reasons why he should not adopt this course; namely, the sessions or assizes may not take place for a considerable time, meanwhile the party accused may remove away and avoid apprehension; and inasmuch as he will not be in custody at the time of preferring the bill, a considerable period must elapse before he can be afterwards tried; independently of which, as the witnesses in such a case will not be bound over to appear and give evidence, there may be very great difficulty in insuring their attendance; and moreover, as in such a case there will be no depositions, the defendant will be unable to see what evidence is likely to be produced against him at the trial, a circumstance which has ever been deemed one of great hardship, and which has often been the cause of drawing down strong animadversions from the Bench. Upon the whole, therefore, it cannot be recommended in any case to prefer a bill before the grand jury without previously submitting the circumstances to an inquiry before a justice.

Modes of procuring the Appearance of the Accused.—If it is intendend to have the case investigated by a justice with a view to a committal for trial, the first proceeding will be that of procuring the personal presence of the party accused before a justice having jurisdiction in the locality where the offence has been

committed; and there are three modes by which such a party may be brought before such justice:—first, by a summons; second, by an arrest under a warrant; and third, by an arrest without a warrant.

Apprehension without a Warrant.—As regards an arrest without a warrant: any person who is present when a felony is committed may at once apprehend the party and take him before a magistrate, to be dealt with according to law; in case of a private individual, however, it is his duty, if no justice can at once be found, to hand the offender over to some constable: (3 Hawk. 156.) But where the offence is not committed in the presence of the party, this distinction exists between the powers of a constable and a private individual—a constable may not only apprehend a party against whom a reasonable charge of felony is made by another person, although it may afterwards turn out that no felony has in fact been committed (*Hobbs v. Branscombe*, 3 Camp. 420; *Davis v. Russell*, 5 Bing. 354; *Cowles v. Dunbar*, M. & M. 37), but he may apprehend a person upon his own suspicion alone of having committed a felony, though in the result it appear that no crime has been committed (*Lawrence v. Hedger*, 3 Taunt. 14; *Nicholson v. Hardwick*, 5 C. & P. 495); but he should act with becoming caution and upon a reasonable ground of suspicion (*Beckwith v. Philby*, 6 B. & C. 635; *Moore v. Kaye*, 4 Taunt. 34); and if, after the apprehension, the constable is guilty of any unnecessary delay in taking the party before a justice, or is guilty of any excess or abuse of power, he will still be liable to an action (*Wright v. Court*, 4 B. & C. 596; *Davis v. Capper*, 10 B. & C. 28.) But with regard to arrests by private persons without a warrant—although they are bound to capture, if possible, a party committing a felony in their presence (2 Hawk. c. 12, s. 1), yet if a man choose to apprehend another without a warrant, upon *suspicion* alone of felony, he will do so at his peril; for should no felony, in point of fact, have been committed, an action will lie against

him for false imprisonment, as suspicion alone is not enough to justify a private individual in making an arrest : (*Stonehouse v. Elliott*, 6 T. R. 315 ; *Hall v. Booth*, 3 Nev. & Man. 316; *Beckwith v. Philby*, 6 B. & C. 635.) In which last case Lord TENTERDEN, C. J., said :—

The only question of law in this case is, whether a constable, having reasonable cause to suspect that a person has committed a felony, may detain such person until he can be brought before a justice of the peace to have his conduct investigated. There is this distinction between a private individual and a constable : in order to justify the former in causing the imprisonment of a person, he must not only make out a reasonable ground of suspicion, but he must prove that a felony has actually been committed; whereas a constable, having reasonable ground to suspect that a felony has been committed, is authorized to detain the party suspected until inquiry may be made by the proper authorities.

If the party be not detected in the actual commission of the offence, and there is no danger of his absconding before a warrant can be obtained, the most advisable course will certainly be to obtain one according to the provisions hereafter stated.

When a Summons or Warrant to be obtained.]—
The course of proceeding where the party is not already in custody, is by obtaining a summons or a warrant against him. Upon this subject section 1 of the 11 & 12 Vict. c. 42, gives ample directions. It is as follows :—

That in all cases where a charge or complaint shall be made before any one or more of Her Majesty's justices of the peace for any county, riding, division, liberty, city, borough or place within England and Wales, that any person has committed or is suspected of having committed any treason, felony, or indictable misdemeanor or other indictable offence whatsoever, within the limits of the jurisdiction of such justice or justices of the peace, or that any person guilty or suspected to be guilty of having committed any such crime or offence elsewhere, out of the jurisdiction of such justice or justices, is residing or being, or is suspected to reside or be within the limits of the jurisdiction of such

justice or justices, then and in every such case, if the person so charged or complained against shall not then be in custody, it shall be lawful for such justice or justices of the peace to issue his or their warrant to apprehend such person, and to cause him to be brought before such justice or justices or any other justice or justices for the same county, riding, division, liberty, city, borough or place, to answer to such charge or complaint, and to be further dealt with according to law: provided always, that in all cases it shall be lawful for such justice or justices to whom such charge or complaint shall be preferred, if he or they shall so think fit, instead of issuing in the first instance his or their warrant to apprehend the person so charged or complained against, to issue his or their summons, directed to such person, requiring him to appear before the said justice or justices at a time and place to be therein mentioned, or before such other justice or justices of the same county, riding, division, liberty, city, borough or place as may then be there.

What Justices may issue a Summons or Warrant.]

—From the foregoing section it will appear that jurisdiction is given to issue a summons or warrant either to a justice within the limits of whose jurisdiction the offence was committed, or the offender is residing.

Over what offences Justices have Jurisdiction.]—

The jurisdiction over the classes of offences is very extensive, and extends to almost all indictable offences and misdemeanors. The section itself certainly speaks of “any treason, felony, or indictable misdemeanor, or other indictable offence.” This, however, must be taken as including such offences only as are not made the subject of a special mode of proceeding. Thus, by the 25 Geo. 2, c. 36, s. 5, a particular course is directed with reference to the initiating proceedings against parties for keeping a disorderly house. So, too, under the Highway Act (5 & 6 Will. 4, c. 56), peculiar provisions are enacted with reference to an indictment for the non-repair of a highway. In these cases, the provisions of the 11 & 12 Vict. c. 42, are clearly not applicable.

When a Summons to issue in the first instance.]—

It will rarely occur that it will be deemed sufficient

merely to issue a *summons*. However, cases may happen in which it may be thought desirable to issue this process in preference to a warrant.

If a summons is to issue in the first instance, it may do so without the information or complaint being either in writing or upon oath : (sect. 8.) But notwithstanding this, the justices may in their discretion require a written information, and upon oath, before issuing their summons, and cases will suggest themselves in which it will be prudent so to require it.

How to issue a Summons.—In order to obtain a summons, the prosecutor should go before a justice with such witnesses as may be necessary to explain the facts of the case, and upon hearing the statement of the offence a summons will be granted. The section upon this subject is the 9th, which enacts—

That upon such information and complaint being so laid as aforesaid, the justice or justices receiving the same may, if he or they shall think fit, issue his or their summons or warrant respectively, as hereinbefore is directed, to cause the person charged as aforesaid to be and appear before him or them, or any other justice or justices of the peace for the same county, riding, division, liberty, city, borough or place, to be dealt with according to law; and every such summons shall be directed to the party so charged in and by such information, and shall state shortly the matter of such information, and shall require the party to whom it is so directed, to be and appear at a certain time and place therein mentioned, before the justice who shall issue such summons, or before such other justice or justices of the peace of the same county, riding, division, liberty, city, borough or place as may then be there, to answer to the said charge, and to be further dealt with according to law; and every such summons shall be served by a constable or other peace officer upon the person to whom it is so directed by delivering the same to the party personally, or if he cannot conveniently be met with, then by leaving the same with some person for him at his last or most usual place of abode; and the constable or other peace officer who shall have served the same in manner aforesaid shall attend at the time and place, and before the justices in the said summons mentioned, to depose, if necessary, to the service of such summons.

The following is the form of the summons :—

SUMMONS TO A PERSON CHARGED WITH AN INDICTABLE OFFENCE.

— } To A. B., of (labourer.)
to wit. } Whereas you have this day been charged before the under-
 signed (one) of Her Majesty's justices of the peace in and for the said
 (county) of , for that you, on , at (i.e., stating shortly
 the offence): these are therefore to command you in Her Majesty's
 name, to be and appear before me on , at o'clock in the
 forenoon, at , or before such other justice or justices of the peace
 for the same (county) as may then be there, to answer to the said
 charge, and to be further dealt with according to law. Herein fail not.

Given under my hand and seal this day of in the
 year of our Lord , at , in the (county) aforesaid.

J. S. [L. s.]

By whom and how served.—The summons when issued is to be served by a constable or other peace officer, and it should be *personal* if possible ; but if the defendant cannot be met with, then it may be left with some person for him at his last or most usual place of abode. Upon the subject of the sufficiency of the service, the reader is referred to page 40.

When and how Warrant to issue in first instance.]

—It has before been seen (*ante*, p. 117) that instead of issuing a summons, the justice may in the first instance grant his warrant of apprehension ; but in that case the information must be made in writing and upon oath. The 8th section of the 11 & 12 Vict. c. 42, is in the following words :—

That in all cases where a charge or complaint for any indictable offence shall be made before such justice or justices as aforesaid, if it be intended to issue a warrant in the first instance against the party or parties so charged, an information and complaint thereof in writing, on oath or affirmation of the informant, or of some witness or witnesses in that behalf, shall be laid before such justice or justices.

And by a subsequent part of the same section it is provided, that no objection shall be allowed to any such

information or complaint for any alleged defect in substance or form, or for any variance between it and the evidence adduced on the part of the prosecution in the examination of the witnesses.

The following may be the form of the information or complaint :—

INFORMATION AND COMPLAINT FOR AN INDICTABLE OFFENCE.

— } The information and complaint of C. D., of (yeoman),
to wit. } taken this day of , in the year of our
Lord , before the undersigned, (one) of Her Majesty's justices of
the peace in and for the said (county) of , who saith that (fc.,
stating the offence.)

Sworn before (me) the day and year first above mentioned.

J. S.

Warrant to apprehend.]—Upon the information being sworn, the justice will issue the warrant which is to be under his hand and seal, and is to remain in force until executed. The 10th section of the 11 & 12 Vict. c. 42, contains ample details as to the contents of the warrant; but as a form embodying them is given by the statute, it is unnecessary to give here more than the form itself.

WARRANT TO APPREHEND A PERSON CHARGED WITH AN
INDICTABLE OFFENCE.

— } To the constable of , and to all other peace officers in
to wit. } the said (county) of .

Whereas A. B., of (labourer), hath this day been charged upon oath before the undersigned, (one) of Her Majesty's justices of the peace in and for the said (county) of , for that he, on the , did (fc., stating shortly the offence): these are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B., and to bring him before (me), or some other of Her Majesty's justices of the peace in and for the said (county), to answer unto the said charge, and to be further dealt with according to law.

Given under my hand and seal this day of in the
year of our Lord , at , in the (county) aforesaid.

J. S. [L. S.]

[M. C.]

M

The Execution of the Warrant.—The 10th section of the 11 & 12 Vict. c. 42, contains ample directions for the execution of this warrant by the constable, and in the same statute are various sections having reference to its execution in other jurisdictions.

The following may be the form of backing to a warrant of apprehension:—

INDORSEMENT IN BACKING A WARRANT.

— } Whereas proof upon oath hath this day been made before me,
to wit. } one of Her Majesty's justices of the peace for the said
(county) of , that the name of J. S. to the within warrant sub-
scribed is of the handwriting of the justice of the peace within men-
tioned; I do therefore hereby authorize W. T., who bringeth to me this
warrant, and all other persons to whom this warrant was originally
directed, or by whom it may lawfully be executed, and also all constables
and other peace officers of the said (county) of , to execute the
same within the said last-mentioned (county) (*), and to bring the said
A. B., if apprehended within the same (county), before me or before some
other justice or justices of the peace of the same (county), to be dealt
with according to law.

Given under my hand this day of , 185 .
J. L.

The Practice where party apprehended on a backed Warrant.—It will be here convenient to state generally, what is the practice to be adopted in the event of a warrant of apprehension being executed in a jurisdiction different from that where the offence was committed. This practice is prescribed by section 22 of the 11 & 12 Vict. c. 42, and is to the following effect. After reciting that it often happens that a person is charged before a justice with an offence alleged to have been committed in another county or place than that in which the party has been apprehended, or in which

* The words following this asterisk are to be used only where the justice backing the warrant shall think fit, and may be omitted in backing English warrants in Ireland, Scotland, &c., or in backing Irish or Scotch warrants, &c., in England.

the justice has jurisdiction, it directs that whenever a person shall appear, or be brought before a justice in a county, &c., charged with an offence alleged to have been committed by him in some county, &c., wherein such justice has *not* jurisdiction, such justice nevertheless is to examine such witnesses, and receive such evidence in proof of such charge as shall be produced before him ; and if in his opinion the testimony and evidence make out the charge, he is thereupon to commit the accused to the common gaol or house of correction for the county, &c., wherein the offence is alleged to have been committed, or he may admit him to bail, and he is then to bind over the prosecutor and witnesses in the usual way. But if the testimony and evidence are not in his opinion sufficient to put him upon his trial, then he is to bind over such witnesses as he has examined by recognizance to give evidence ; and he is also by his warrant to order the accused party to be taken before some justice in and for the county, &c., where and near to the place where the offence is alleged to have been committed ; and at the same time he is to deliver the information and complaint, and also the depositions and recognizances so taken by him, to the constable who shall have the execution of the warrant, to be by him delivered to the justice before whom he is to take the accused ; and which depositions and recognizances are to be deemed taken in the case, and are to all intents and purposes to be treated as such, and are, together with such depositions and recognizances as the last mentioned justice shall take in the matter, to be transmitted to the clerk of the court where the party is to be tried. Provision is then made for the payment of the costs of the constable.

Duty of Justice upon a backed Warrant to hear the case.—In cases where a party is apprehended upon a backed warrant, it will rarely occur that there will be any witnesses in attendance to give evidence ; the duty of the justice in such case will be simply to grant his

warrant for the conveyance of the accused before a justice, within whose jurisdiction the offence was committed. If, however, the witnesses are ready with their evidence, it will be his duty to hear them, in which case all the provisions of the statute hereafter referred to, and the practice thereon, should be carefully observed.

The following may be the warrant :—

WARRANT TO CONVEY THE ACCUSED BEFORE A JUSTICE OF THE COUNTY, ETC., IN WHICH THE OFFENCE WAS COMMITTED.

— } To W. T., constable of , and to all other peace officers
to wit. } in the said (county) of .

Whereas A. B., of (labourer), hath this day been charged before the undersigned (one) of Her Majesty's justices of the peace in and for the said (county) of , for that (gc., as in the warrant to apprehend); and whereas (I)* have taken the deposition of C. D., a witness examined by (me) in this behalf; but inasmuch as (I)* am informed that the principal witnesses to prove the said offence against the said A. B. reside in the (county) of C., where the said offence is alleged to have been committed: these are therefore to command you, the said constable, in Her Majesty's name forthwith to take and convey the said A. B. to the said (county) of C., and there carry him before some justice or justices of the peace in and for that (county), and near unto the (parish of D.), where the offence is alleged to have been committed, to answer further to the said charge before him or them, and to be further dealt with according to law; and (I) hereby further command you the said constable, to deliver to the said justice or justices the information in this behalf,* and also the said deposition of C. D.,* now given into your possession for that purpose, together with this precept.

Given under my hand and seal this day of , in the
year of our Lord , at , in the (county) aforesaid.

J. S. [L. S.]

* If no witnesses have been examined, omit the words between the asterisks * *.

Payment of Constable's Expenses.—The statute contains a form of order upon the treasurer for the payment of the constable's expenses in conveying the accused, pursuant to the 23rd section.

Offences committed on the high seas or abroad.—When any indictable offence is committed on the high seas, or in any creek, harbour, &c., within the jurisdiction of the Admiralty, or in any parts abroad, power is given to any justice within whose jurisdiction the party happens to be to cause him to be apprehended and brought before him to answer to the charge: (sect. 2.) And in such case the following directions are given as to the warrant:—

WARRANT TO APPREHEND A PERSON CHARGED WITH AN INDICTABLE OFFENCE, COMMITTED ON THE HIGH SEAS OR ABROAD.

For offences committed on the high seas the warrant may be the same as in ordinary cases, but describing the offence to have been committed "on the high seas, out of the body of any county of this realm, and within the jurisdiction of the Admiralty of England."

For offences committed abroad for which the parties may be indicted in this country, the warrant also may be the same as in ordinary cases, but describing the offence to have been committed "on land, out of the United Kingdom, to wit, at _____, in the kingdom of _____," or "at _____, in the East Indies;" or "at _____, in the island of _____, in the West Indies," or as the case may be.

Warrant may be granted and executed on a Sunday.—Any warrant of apprehension before mentioned may be granted and executed on a Sunday: (sect. 4.)

Search Warrant.—It not unfrequently occurs that, without any direct proof of guilt existing against a party, there is, nevertheless, evidence of his possession of stolen goods, which the owner is in a condition to identify. In such a case, criminal proceedings are often initiated by an application to a justice for a search

warrant, which being granted, the suspected premises are searched by a constable, when, should the goods be discovered, they are taken possession of, and the occupier of the premises whereon they are found is himself apprehended, and brought before the magistrate to answer the charge either of having stolen, or received them knowing them to have been stolen.

How to obtain a Search Warrant.]—When, therefore, a party whose goods have been stolen has reasonable grounds for suspecting that they are upon the premises of some particular person, he should go before a justice having jurisdiction in the district where the premises are situate, and make oath by himself or his witnesses of the facts upon which he founds his application; and upon satisfying the justice, either that the goods were stolen, or that there is reason to suspect they are stolen, and that there is also reason to believe they are upon the premises indicated, he will grant his warrant not only to search the premises and seize the goods, but to apprehend the party in whose possession they may be found: (*Elsee v. Smith*, 1 Dowl. & Ry. 97.) Under the Larceny Act, 7 & 8 Geo. 4, c. 29, it is enacted by section 63, that if any credible witness shall prove upon oath before a justice of the peace a reasonable cause to suspect that any person has in his possession, or on his premises, any property whatsoever, on or with respect to which any offence punishable by that act, either upon indictment or summary conviction shall have been committed, the justice may grant a warrant to search for such property as in the case of stolen goods.

Manner of executing a Search Warrant.]—Great caution should be observed in executing this warrant. The constable to whom it is directed will be the party intrusted with it, but he should be accompanied to the premises by the owner of the property, or some other person who is enabled to point out and swear to the goods in question. If the premises are closed, and the

constable is denied admission after demand and disclosing his authority and the object of his visit, they may be forced open by him. In making the search, care must be observed that no other goods than those designated in the warrant, or such as have been actually stolen, be seized: (*Crozier v. Cundy*, 6 B. & C. 232.) Should the goods sought for be found, the constable will seize and keep them in his possession, and he will then also, by virtue of his warrant, apprehend the person on whose premises they have been found, and take him before the magistrate to answer the charge which will then be preferred against him.

Form of Search Warrant.]—The following may be the form of the warrant:—

SEARCH WARRANT.

— } To the constable of , and to all other peace officers
to wit. } in the said (county) .

Whereas A. B., of , in the said county (*yeoman*), hath this day made information and complaint on oath before me, J. P., esquire, one of Her Majesty's justices of the peace in and for the said (county), that the following goods, to wit (here specify the articles stolen, or some portion thereof), the property of the said A. B., have lately been feloniously stolen, taken and carried away from a certain dwelling-house and premises at the , in the said county, and that he hath just cause to suspect, and doth suspect, that the said goods, or some part thereof, are concealed in the (*dwelling-house*) and premises of C. D., of , in the said (county), (*labourer*): these are therefore to authorize and command you, or one of you, with proper assistance, to enter the said (*dwelling-house*) and premises of the said C. D. in the day-time, and there diligently search for the said goods; and if the same, or any part thereof, shall be found upon such search, that you bring the goods so found, and also the body of the said C. D., without delay before me, or some other justice of the peace for the said (county), to be dealt with according to law.

Given under my hand and seal at , in the said (county),
the day of , in the year of our Lord, 185 .
J. S. [L. S.]

Search Warrant may be granted and executed on a Sunday]—By the 4th section of the 11 & 12 Vict. c. 42, a search warrant may be granted and issued on a Sunday, and consequently may be executed on that day.

Importance of obtaining a Search Warrant in the first instance.]—In very many cases, particularly where the charge is likely to mould itself into one of receiving goods knowing them to have been stolen, the obtaining of a search warrant in the first instance will be the most advisable course, since the prosecutor is thereby enabled at the same time both to seize the goods upon the premises before they are made away with (and so obtain cogent evidence in support of his case), and apprehend the party suspected of guilt in the transaction; whereas, if a warrant to apprehend merely be obtained in the first instance, great, if not insurmountable difficulties may afterwards be experienced in getting at the property, and thus a case, otherwise almost conclusive, may entirely fail for want of the necessary evidence for its support.

CHAPTER IX.

APPEARANCE AND NON-APPEARANCE OF THE PARTIES
—COMPELLING ATTENDANCE OF WITNESSES—AD-
JOURNMENTS, ETC.

Proceedings when party apprehended without warrant.—If the party has been apprehended without warrant, he may be immediately taken before a justice, and the case at once be disposed of. It is rarely, however, that an examination immediately upon the arrest can conveniently be gone into ; and where this is so, the prosecutor will be informed of the time and place when and where it will be necessary for himself and his witnesses to attend.

Duty of Prosecutor to be in attendance.—It will therefore be the duty of the prosecutor to be in attendance ready to substantiate his charge at the time and place indicated, and to wait in attendance until the case is called on. Should the prisoner have been apprehended upon a warrant, the charge will then be proceeded with, unless for some sufficient reason the justices think fit to adjourn it to a future time.

Non-appearance of Defendant upon being summoned—Proceedings thereupon.—If the party has only been summoned, and he do not appear, his name should be called in the purlieus of the court, so that no doubt should exist of his having failed to obey the summons. The 9th section of 11 & 12 Vict. c. 42, describes the course of proceeding where the party fails to appear upon the summons, and it enacts—

That the constable or other peace officer who shall have served the same in manner aforesaid, shall attend at the time and place, and be-

fore the justices in the said summons mentioned, to depose, if necessary to the service of such summons; and if the person so served shall not be and appear before the justice or justices at the time and place mentioned in such summons, in obedience to the same, then it shall be lawful for such justice or justices to issue his or their warrant for apprehending the party so summoned and bringing him before such justice or justices or some other justice or justices of the peace for the same county, riding, division, liberty, city, borough or place, to answer the charge in the said information and complaint mentioned, and to be further dealt with according to law.

If, therefore, the defendant fail to attend, the magistrates will examine the constable on oath as to the service of the summons. If it has not been legally served, as provided for by section 9 (*ante*, p. 119), they will either issue another summons, or grant a warrant of apprehension; but in the latter case they must, pursuant to section 8, take an information in writing and upon oath: (see as to service of summons *ante*, p. 40.) If, however, it appear that the summons *has* been duly served, the magistrates may issue their warrant of apprehension without taking any fresh information of any kind.

Appearance of Defendant—Non-appearance of Prosecutor—Adjournment, Discharge, Commitment, or Bailing of Defendant.—Should the defendant appear, and the prosecutor not, nor any one on his behalf, and no satisfactory reason be given for his absence, the justices may discharge the party; or if any satisfactory reason should present itself to their minds why this course would be undesirable, it will be competent to them to remand the accused to a future time, and this they have ample power to do by virtue of the 21st section of the 11 & 12 Vict. c. 43, which enacts—

That if from the absence of witnesses, or from any other reasonable cause, it shall become necessary or advisable to defer the examination or further examination of the witnesses for any time, it shall be lawful to

and for the justice or justices before whom the accused shall appear, or be brought by his or their warrant, from time to time to remand the party accused for such time as by such justice or justices in their discretion shall be deemed reasonable, not exceeding eight clear days, to the common gaol or house of correction, or other prison, lock-up house or place of security in the county, riding, division, liberty, city, borough or place for which such justice or justices shall then be acting; or if the remand be for a time not exceeding three clear days, it shall be lawful for such justice or justices verbally to order the constable or other person in whose custody such accused party may then be, or any other constable or person to be named by the said justice or justices in that behalf, to continue or keep such party accused in his custody, and to bring him before the same or such other justice or justices as shall be there acting, at the time appointed for continuing such examination.

The same section then provides that the accused may be brought up before the expiration of the time for which he is remanded. It also enacts that, instead of detaining the accused in custody during the period of remand, he may be discharged, upon his entering into a recognizance with or without surety or sureties conditioned for his appearance at the time and place appointed; and if he shall fail to appear, the justice may certify the non-appearance upon the back of the recognizance, and transmit it to the clerk of the peace for the county, &c., to be proceeded upon in like manner as other recognizances, and such certificate is to be deemed *prima facie* evidence of such non-appearance of the said party: (see *post*, pp. 132, 133.)

Justices cannot go into the case in the absence of the Defendant.—The importance of securing the attendance of the accused is seen in this, that without his personal presence the justices have no jurisdiction to enter into the case; and herein consists an important distinction between such a case, and a proceeding by way of summary conviction in which, as has been seen (*ante*, p. 44), on the non-appearance of the defendant the

justices may proceed to hear the case *ex parte*, and finally determine the same.

Appearance of both Parties—Adjournments.]—Upon both parties appearing, the case will be proceeded with, unless some application is made for an adjournment. Upon the subject generally of adjournments, the justices, as before has been shown (*ante*, p. 130), have full discretionary powers, and it is hardly necessary to add, that whenever a reasonable ground for an adjournment is established by either party, the justices should grant it, first, however, being satisfied that no injury to the interests of public justice is likely to result.

Adjournments, for how long a period.]—It has before been seen (*ante*, p. 131) that, by section 21 of the 11 & 12 Vict. c. 42, the remand may be from time to time for a period not exceeding eight clear days. In such cases the remand must be by warrant. But if the accused is to be remanded for any period not exceeding *three* clear days, then it may be effected verbally, and without a warrant; and with reference to committing the defendant to custody pending an adjournment, the power to do so is not dependent upon the fact of the defendant having been apprehended, for the right thus to commit equally exists though he appeared voluntarily to a summons.

The following may be the forms:—

WARRANT REMANDING A PRISONER.

— } To the constable of _____, and to the (*keeper of the House*
to wit. } of Correction) at _____, in the said (county) of _____.

Whereas A. B. was this day charged before the undersigned, (*one*) of Her Majesty's justices of the peace in and for the said (county), for that (*etc., as in the warrant to apprehend*); and it appears to me to be necessary to remand the said A. B.: these are therefore to command you, the said constable, in Her Majesty's name, forthwith to convey the said A. B. to the (*House of Correction*) at _____, in the said (county), and there to deliver him to the keeper thereof, together with this precept; and I hereby command you, the said keeper, to receive the said A. B. into your custody in the said (*House of Correction*), and there

safely keep him until the day of instant, when I hereby command you to have him at , at o'clock in the forenoon of the same day, before (*me*), or before such other justice or justices of the peace for the said (*county*) as may then be there, to answer further to the said charge, and to be further dealt with according to law, unless you shall be otherwise ordered in the mean time.

Given under my hand and seal this day of , in the year of our Lord , at , in the (*county*) aforesaid.
J. S. [L. S.]

If a second remand has taken place, this warrant may easily be adapted to meet that state of things—

RECOGNIZANCE OF BAIL INSTEAD OF REMAND ON AN
ADJOURNMENT OF EXAMINATION.

— } Be it remembered, that on the day of , in the
to wit. } year of our Lord , A. B. of (*labourer*), L. M.
of (*grocer*), and N. O. of (*butcher*), personally came before
me, (*one*) of Her Majesty's justices of the peace for the said (*county*),
and severally acknowledged themselves to owe to our Lady the Queen
the several sums following: that is to say, the said A. B. the sum
of , and the said L. M. and N. O. the sum of each, of good
and lawful money of Great Britain, to be made and levied of their several
goods and chattels, lands, and tenements respectively, to the use of our
said Lady the Queen, her heirs and successors, if he, the said A. B.
fail in the condition indorsed.

Taken and acknowledged the day and year first above mentioned,
at , before me, J. S.

CONDITION.

The condition of the within-written recognizance is such that, whereas the within-bounden A. B. was this day (*or on* last past) charged before me, for that (*g^c.*, *as in the warrant*); and whereas the examination of the witnesses for the prosecution in this behalf is adjourned until the day of instant; if, therefore, the said A. B. shall appear before me on the said day of instant, at o'clock in the forenoon, or before such other justice or justices of the peace for the said (*county*) as may then be there, to answer (*further*) to the said charge, and to be further dealt with according to law, then the said recognizance to be void, or else to stand in full force and virtue.

[M. C.]

N

NOTICE OF SUCH RECOGNIZANCE TO BE GIVEN TO THE ACCUSED
AND HIS SURETIES.

— } Take notice that you, A. B., of _____, are bound in the sum
to wit. } of _____, and your sureties L. M. and N. O. in the sum
of _____ each, that you, A. B., appear before me, J. S., one of Her
Majesty's justices of the peace for the (county) of _____, on
the _____ day of _____ instant, at _____ o'clock in the forenoon, at _____, or
before such other justice or justices of the peace for the same (county)
as may then be there, to answer further to the charge made against you
by C. D., and to be further dealt with according to law; and unless you,
A. B., personally appear accordingly, the recognizance entered into by
yourself and sureties will be forthwith levied on you and them.

Dated this _____ day of _____, 185 .

J. S.

CERTIFICATE OF NON-APPEARANCE TO BE INDORSED ON THE
RECOGNIZANCE.

I hereby certify that the said A. B. hath not appeared at the time
and place in the above condition mentioned, but therein hath made
default, by reason whereof the within-written recognizance is forfeited.

J. S.

The practical mode of taking the recognizance has
been stated at page 48, *ante*.

*Mode of compelling attendance of witnesses for the
prosecution.*]—It will often occur, that in order to
substantiate the charge on the part of the prosecution,
it is necessary to have the evidence of some unwilling
witness. In such case, the Legislature has empowered
the magistrates to compel the attendance of witnesses
either by summons or warrant. The 16th section of the
11 & 12 Vict. c. 42, enacts—

That if it shall be made to appear to any justice of the peace, by the
oath or affirmation of any credible person, that any person within the
jurisdiction of such justice is likely to give material evidence for the
prosecution, and will not voluntarily appear for the purpose of being
examined as a witness at the time and place appointed for the examina-
tion of the witnesses against the accused, such justice may and is hereby
required to issue his summons to such person, under his hand and seal,

requiring him to be and appear at a time and place mentioned in such summons, before the said justice or before such other justice or justices of the peace for the same county, riding, division, liberty, city, borough or place as shall then be there, to testify what he shall know concerning the charge made against such accused party.

When compulsory process can be obtained against a Witness.—To justify a summons being issued to a witness, it is necessary, as appears from the foregoing section, that a deposition should be made on oath or affirmation: 1st, that the witness is within the jurisdiction; 2nd, that he is likely to give material evidence; and 3rd, that he will not attend voluntarily for the purpose of being examined. In a subsequent part of the same section, the justice is empowered to issue his warrant of apprehension in the first instance against a witness; but in that case he must be satisfied by oath or affirmation, that it is probable the witness will not attend without being compelled.

This part of the section is as follows:—

Or if such justice shall be satisfied, by evidence upon oath or affirmation, that it is probable that such person will not attend to give evidence without being compelled so to do, then, instead of issuing such summons, it shall be lawful for him to issue his warrant in the first instance, and which, if necessary, may be backed as aforesaid.

The following are the forms given by the statute:—

SUMMONS OF A WITNESS.

— } To E. F., of , (labourer.)
to wit. } Whereas information hath been laid before the undersigned (one) of Her Majesty's justices of the peace in and for the said (county) of , that A. B. (i.e., as in the summons or warrant against the accused), and it hath been made to appear to me, upon (oath), that you are likely to give material evidence for the (prosecution): these are therefore to require you to be and appear before me on next, at o'clock in the forenoon, at , or before such other justice or justices of the peace for the same county as may then be there, to

testify what you shall know concerning the said charge so made against the said A. B. as aforesaid. Herein fail not.

Given under my hand and seal this day of , in the
year of our Lord , at , in the (county) aforesaid.
J. S. [L. S.]

WARRANT FOR A WITNESS IN THE FIRST INSTANCE.

— } To the constable of , and to all other peace officers
to wit. } in the said (county) of .

Whereas information hath been laid before the undersigned, (one) of Her Majesty's justices of the peace for the said (county) of , that (g.c., as in the summons); and it having been made to appear to (me), upon oath, that E. F., of (labourer), is likely to give material evidence for the prosecution, and that it is probable that the said E. F. will not attend to give evidence without being compelled so to do: these are therefore to command you to bring and have the said E. F. before me on , at o'clock in the forenoon, at , or before such other justice or justices of the peace for the same (county) as may then be there, to testify what he shall know concerning the said charge so made against the said A. B. as aforesaid.

Given under my hand and seal this day of , in the
year of our Lord , at , in the (county) aforesaid.
J. S. [L. S.]

Warrant against a Witness on his failing to appear to a Summons.]—If the witness has been duly served with a summons, and he fail to appear at the proper time, and no sufficient excuse is offered for his absence, then, upon proof upon oath or affirmation that the summons has been served upon him either personally or by leaving it for him with some person at his last or most usual place of abode, the justice or justices may issue a warrant under hand and seal to apprehend him: (sect. 16.)

The following is the form prescribed:—

WARRANT WHERE A WITNESS HAS NOT OBEYED A SUMMONS.

— } To the constable of , and to all other peace officers in
to wit. } the said (county) of .

Whereas information having been laid before the undersigned, (one) of

Her Majesty's justices of the peace in and for the said (*county*) of , that A. B. (*ſc.*, *as in the summons*); and it having been made to appear to (*me*), upon oath, that E. F., of (*labourer*), was likely to give material evidence for the prosecution, I did duly issue my summons to the said E. F., requiring him to be and appear before (*me*) on , at , or before such other justice or justices of the peace for the same (*county*) as might then be there, to testify what he should know respecting the said charge so made against the said A. B. as aforesaid; and whereas proof hath this day been made before me, upon oath, of such summons having been duly served upon the said E. F., and whereas the said E. F. hath neglected to appear at the time and place appointed by the said summons, and no just cause has been offered for such neglect: these are therefore to command you to bring and have the said E. F. before me on , at o'clock in the forenoon, at , or before such other justice or justices of the peace for the same (*county*) as may then be there, to testify what he shall know concerning the said charge so made against the said A. B. as aforesaid.

Given under my hand and seal this day of , in the
year of our Lord , at , in the (*county*) aforesaid.
J. S. [L. S.]

Mode of compelling attendance of a witness who is out of the jurisdiction.—It will be observed that a summons or warrant can only be issued when the witness is within the jurisdiction of the justice, though if he afterwards remove out of such jurisdiction the warrant may be backed: (sect. 15.) If, therefore, it is necessary to have the testimony of a witness, who will not voluntarily attend, and who is not within the jurisdiction of the justice before whom the charge is to be heard, the only mode of compelling his appearance is by a Crown Office subpœna, which issues upon application out of the Crown Office in London, and which may be followed by an attachment if disobeyed: (*Reg. v. Greenaway*, 7 Q. B. 126; *Reg. v. Carey*, 7 Q. B. 126.)

A witness cannot demand his expenses in the first instance.—A witness cannot refuse to attend, upon

being served with a summons or a subpœna, until his expenses are paid : (*R. v. James*, 1 C. & P. 322.)

No power to compel attendance of witnesses for a prisoner—how such witnesses to be obtained.]—The power of a justice to compel the attendance of witnesses extends to those only on the part of the prosecution ; the party accused of an indictable offence, unlike a party charged with an offence punishable upon summary conviction having no means of compulsorily enforcing the attendance of any witness before the committing magistrate, except through the process before mentioned of a Crown Office subpœna. If, therefore, it is deemed advisable on the part of an accused party (which it seldom will be) to compel the attendance of any witness on his behalf before the committing justice, his only course will be that before adverted to, of obtaining a subpœna from the Crown Office in London.

CHAPTER X.

THE HEARING.

Appearance of parties at the time of hearing.—At the time and place appointed for the hearing, it is the duty of the prosecutor to be in attendance with his witnesses. If the accused party be in custody, he will be produced by the constable having charge of him. If he has merely been summoned and fail to appear, it has been shown in what manner he may be apprehended : (*ante*, p. 129.)

Preparations for the hearing by the prosecutor.—Before, however, appearing to substantiate the charge, it will be advisable for the prosecutor or his attorney so to marshal and arrange his evidence, as to present it in the most simple and intelligible form to the magistrates. If the case has been placed in the hands of an attorney, he will carefully look to the evidence, remembering that, as the testimony is given to the justices, so will it be taken down in the written depositions which afterwards are to come under the eye of the judge who ultimately tries the case, and whose only knowledge of it will, in the first instance, be derived from such depositions; facts, of the more importance when it is remembered that, upon the depositions so taken, the judge may have occasion to direct the grand jury as to the mode in which they should deal with the bill of indictment. Nor let it be supposed that, because the hearing before the justices is only preliminary, and not of a final nature, that slight evidence alone will be sufficient to warrant a committal. Justices upon such a hearing have a right to expect, and ought to insist upon having, the

best evidence which exists in the case; and, although it is not for them to balance evidence, yet such evidence as is produced in support of the charge ought to be of the same nature and quality as that which would be admitted at the trial of the accused. In preparing, therefore, for the hearing before the committing justices no evidence should be collected that would not be admissible upon the trial; and all that *would* be required upon the trial to support the charge should be carefully gathered together for use upon the preliminary inquiry.

Steps to be taken by the accused..]—As regards the accused, it will be well for him, if of ability to do so (and he denies the truth of the charge), to avail himself, at this early stage, of professional assistance. When apprehended, and in custody, he will probably desire the attendance of some attorney, whom to consult; usually, this request is promptly complied with, but as the accused has before committal for trial no absolute right to an interview with any one, it is sometimes refused. Should the constable in charge of the prisoner decline to permit the prisoner to see a professional adviser, an application might with propriety be made to the justice who will hear the case, when, should he also refuse the application, there is no other remedy: a state of things, no doubt, very inconsistent with that principle of fair dealing which should ever pervade the administration of the criminal law, and which few justices, it is believed, would lend themselves to encourage.

Place of hearing not an open court—Counsel or attorney of accused..]—It has before been shown (*ante*, p. 37) that when magistrates are hearing a case summarily, the place in which they sit is an open court of justice, to which all the Queen's subjects have a right of access; and that upon such a hearing the respective parties have, by section 12 of the 11 & 12 Vict. c. 43, a right to have their cases conducted by counsel or attorney.

Upon an inquiry, however, under the 11 & 12 Vict. c. 42, with a view to a committal to trial, this is not so; and the place in which the case is heard is declared not to be an open court, and the justices are empowered to exclude all persons from it.

The 19th section thus enacts :—

That the room or building in which such justice or justices shall take such examinations and statements as aforesaid shall not be deemed an open court for that purpose; and it shall be lawful for such justice or justices, in his or their discretion, to order that no person shall have access to or be or remain in such room or building without the consent or permission of such justice or justices, if it appear to him or them that the ends of justice will be best answered by so doing.

Under the provisions of this clause, therefore, the justices have power to conduct their proceedings in private, and so exclude all persons, even including the professional advisers of either of the parties. The section seems certainly to contemplate, that the exclusion will only take place when it shall appear that the ends of justice will be best answered by it; but it is difficult to conceive any possible case in which the ends of justice can best be answered by refusing an accused party the assistance of a legal adviser. As the law now stands, the depositions of the witnesses taken by the magistrate are receivable in evidence on the trial, in the event of the death of such witnesses, or their being too ill to travel; the importance, therefore, to the accused of being enabled to cross-examine through the agency of a legal adviser, is as obvious as it is great. Common justice declares, that at a time of such peril as that of the examination of the witnesses by the committing justice, the accused party ought not to be deprived of legal professional assistance. There is really only one argument of any apparent weight that can be advanced in opposition to the permission suggested, and that consists in the possibility of the professional adviser taking advantage of what may transpire in the justice room, to warn others not yet in custody, or otherwise to defeat the ultimate ends of

justice. This argument, however, becomes puerile in the extreme, when it is remembered that counsel and attorneys are members of an honourable profession, and are directly amenable, in cases of professional obliquity, to the all-powerful censure of the superior courts, and would, therefore, scarcely lend themselves to a proceeding which must necessarily result in their disgrace and ruin. But whether or not the interests of the public might be endangered is a consideration of trivial importance, when the sacred cause of justice to an accused is involved ; indeed, it may well be questioned if justice to the public can ever be promoted by doing injustice to any one of its members. It would seem, however, that the omission of the Legislature in the 11 & 12 Vict. c. 42, to make an exception in favour of the legal advisers of the accused, was more accidental than intentional ; for, upon attention being drawn to this omission in the statute, the Legislature in the corresponding act for Ireland, passed in the following year (12 & 13 Vict. c. 68), whilst similarly enacting by section 19 for power to exclude the public, expressly reserves the right of the counsel or attorney of any person, then being in such court as a prisoner, to be present. So that, upon this point, without there being any motive for such a distinction, a distinction clearly exists ; but one, nevertheless, which is clearly to be attributed to inadvertency, since there cannot be any possible reason for giving to a prisoner in Ireland a right which is debarred to a prisoner in England.

In practice it rarely occurs that either the prosecutor or the prisoner is prohibited from having the assistance of a professional adviser ; and when the pressing reasons for permitting the assistance, coupled with the partial recognition of the practice as contained in the 17th section, which section directly refers to the cross-examination of the witnesses by the counsel or attorney of the accused, are taken into consideration, it is hoped that no bench of magistrates will ever refuse an application of the kind.

Proceeding with the case unless adjourned.—Upon the parties being duly before the Bench, the case will be proceeded with, unless for any sufficient reason an adjournment is requested and granted, of which mention has before been made: (*ante*, p. 130.)

Witnesses ordered out of court.—At this stage of the proceedings a request will probably be preferred to the justices to order the witnesses to remain out of court until they are severally required to give their evidence; in such a case the request should uniformly be complied with: (as to which see *ante*, p. 54.)

Statement of the charge—Variances.—The charge is then read over to the accused from the charge-sheet, summons or warrant, or it is stated to him in a general way. Should there have been a prior information or complaint laid, no advantage can be taken of any defect therein, either in substance or form, nor for any variance between it and the evidence; since, when an information is taken, it is not for the purpose of being a record in the cases, but to enable the justice to judge whether or not he should interfere, and to guide his discretion as to the propriety of issuing a summons or a warrant: (sect. 8.) So, too, by sections 9 and 10 no such objections are to be allowed to any summons or warrant, nor for any such variance; but if any variance shall appear to the justice to be such that the party charged has been thereby deceived or misled, he may, at the request of the party charged, adjourn the hearing of the case to some future day, and in the mean time remand the accused, or admit him to bail.

Course of proceeding in examining witnesses, &c.—All preliminaries being arranged, the hearing is proceeded with; and here it may be remarked that the accused is not to be called upon to plead, but the case is to be substantiated against him in the first instance, justices having no functions in indictable offences to deal summarily with the accused, even though he openly admit his guilt. See, however, the course of

proceedings against juvenile offenders, and also the practice under the Larceny Summary Jurisdiction Act, *post*. The course of proceedings upon the hearing is set out in the 17th section of the 11 & 12 Vict. c. 42, which enacts—

That in all cases where any person shall appear or be brought before any justice or justices of the peace charged with any indictable offence, whether committed in England or Wales, or upon the high seas or on land beyond the seas, or whether such person appear voluntarily upon summons or have been apprehended with or without warrant, or be in custody for the same or any other offence, such justice or justices, before he or they shall commit such accused person to prison for trial, or before he or they shall admit him to bail, shall, in the presence of such accused person, who shall be at liberty to put questions to any witness produced against him, take the statement, on oath or affirmation, of those who shall know the facts and circumstances of the case, and shall put the same into writing; and such depositions shall be read over to and signed respectively by the witnesses who shall have been so examined, and shall be signed also by the justice or justices taking the same; and the justice or justices before whom any such witness shall appear to be examined as aforesaid, shall, before such witness is examined, administer to such witness the usual oath or affirmation which such justice or justices shall have full power and authority to do; and if, upon the trial of the person so accused as first aforesaid, it shall be proved by the oath or affirmation of any credible witness that any person whose deposition shall have been taken as aforesaid is dead, or so ill as not to be able to travel; and if, also, it be proved that such deposition was taken in the presence of the person so accused, and that he, or his counsel or attorney, had a full opportunity of cross-examining the witness, then, if such deposition purport to be signed by the justice by or before whom the same purports to have been taken, it shall be lawful to read such deposition as evidence in such prosecution without further proof thereof, unless it shall be proved that such deposition was not, in fact, signed by the justice purporting to sign the same.

Order of examination of witnesses.—The order in which the several witnesses will be called will be in the discretion of the prosecutor or his professional adviser, who of course will take them in such succession as best elucidates the facts. As the justices themselves

will have little if any previous knowledge of the circumstances of the charge, it is a convenient practice, if the prosecution is conducted by a professional gentleman, to permit him to examine his witnesses, and thus elicit the facts through the medium of his own questions.

Witnesses to be sworn or affirmed.—Before, however, the testimony of any witness is taken, it is necessary that he should be sworn or make affirmation in those cases in which an affirmation is permitted. Upon this subject the reader is referred to pp. 56 and 57, *ante*. It may, however, here be observed that the provisions of the 17 & 18 Vict. c. 125, relative to the taking of the solemn affirmation or declaration of persons who are unwilling, from conscientious motives, to be sworn, will not apply to cases such as those under consideration, the court at this time not being one of civil jurisdiction.

The statements of the witnesses must in all cases be made upon oath or affirmation, that is, the oath or affirmation must be administered in the first instance, and not merely administered after the evidence is given : (*ante*, p. 58.)

Witness refusing to be sworn or examined—Commitment.—Should the witness refuse to be sworn or examined, he may be committed to gaol for any period not exceeding seven days, unless in the mean time he shall consent to be examined, and answer concerning the matter : (sect. 16.) Under such circumstances the following may be the warrant of commitment :—

WARRANT OF COMMITMENT OF A WITNESS FOR REFUSING TO BE
SWORN OR TO GIVE EVIDENCE.

— } To the constable of _____, and to the keeper of the (*House*
to wit } of *Correction*) at _____, in the said (*county*) of _____.

Whereas A. B. was lately charged before the undersigned, (*one*) of Her Majesty's justices of the peace in and for the said (*county*) of _____, for that (*gc., as in the summons*); and it having been made to appear to (*me*), upon oath, that E. F., of _____, was likely to give material evidence for the prosecution, I duly issued my summons to the said E. F., requiring him to be and appear before me on _____, at _____,

[M. C.]

O

or before such other justice or justices of the peace as should then be there, to testify what he should know concerning the said charge so made against the said A. B. as aforesaid; and the said E. F., now appearing before me (or, being brought before me by virtue of a warrant in that behalf to testify as aforesaid), and being required to make oath or affirmation as a witness in that behalf, hath now refused so to do (or, being duly sworn as a witness, doth now refuse to answer certain questions concerning the premises which are here put to him) without offering any just excuse for such his refusal: these are therefore to command you, the said constable to take the said E. F. and him safely to convey to the (*House of Correction*) at _____, in the (*county*) aforesaid, and there deliver him to the said keeper thereof, together with this precept; and I do hereby command you, the said keeper of the said (*House of Correction*), to receive the said E. F. into your custody in the said (*House of Correction*), and him there safely keep for the space of _____ days for his said contempt, unless he shall in the mean time consent to be examined and to answer concerning the premises; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this _____ day of _____, in the
year of our Lord _____, at _____, in the (*county*) aforesaid.
J. S. [L. S.]

Evidence.]—Upon the subject of the evidence, little need here be said, except that it should not be supposed because this is merely a preliminary inquiry, that the rules of evidence may be relaxed, since the justices ought to act upon the same rules as though the case were being finally heard and determined in one of the superior courts; sufficient has already been said upon this point: (*ante*, p. 59.)

Form of Depositions.]—The 11 & 12 Vict. c. 42, has, by section 17, pointed out the practical form in which the depositions of the witnesses are to be taken down. The form given is as follows:—

DEPOSITIONS OF WITNESSES.

— } The examination of C. D., of _____ (*farmer*), and E. F.,
to wit. } of _____ (*labourer*), taken on (*oath*) this _____ day
of _____, in the year of our Lord _____, at _____, in the (*county*)
aforesaid, before the undersigned, (*one*) of Her Majesty's justices of the

peace for the said (county), in the presence and hearing of A. B., who is charged this day before (me) for that he the said A. B., on , at (f.c., describing the offence as in the warrant of commitment.)

This deponent C. D., on his (oath), saith as follows (f.c., stating the depositions of the witness as nearly as possible in the words he uses. When his deposition is complete let him sign it.)

And this deponent E. F., upon his oath, saith as follows (f.c.)

The above depositions of C. D. and E. F. were taken and (sworn) before me, at , on the day and year first above mentioned. J. S.

Care in accurately taking Depositions.—In taking the evidence of the witnesses, care should be observed to record it as far as possible in the very words in which it is delivered, the exact natural language and peculiar phraseology being preserved as nearly as may be. It is not, however, necessary to take down all that a witness may state, since that which is clearly irrelevant or not admissible as evidence, ought not to be admitted. If, however, any doubt should arise as to whether certain evidence be admissible or not, the better plan will be to take it and leave it to another tribunal to decide whether it shall be used or not.

Cross-examination, taking down same in Depositions.—As the examination-in-chief of each witness for the prosecution is brought to a close, the accused should be informed by the Bench that he may put any questions, touching the matter, he thinks proper. If the party charged has the assistance of a professional adviser, such adviser should be permitted to conduct the cross-examination, which should be taken down by the clerk to the justices upon the same paper, and in the same way as the examination-in-chief, taking care, however, to distinguish between the two kinds of examination by the word "cross-examination."

Re-examination.—Upon the cross-examination being concluded, the witness may be re-examined in explanation of anything he has said in his cross-examination, and indeed there seems to be no reason why,

upon this inquiry, he may not at any time be called back to add to or explain his evidence.

Adjournments pending the inquiry.]—At any period of the investigation before committal, it is quite competent to the justices to adjourn the inquiry, and if any reasonable suggestion is made to them, that the interests of justice require an adjournment, such as the procuring of fresh evidence, the absence of any of the witnesses, or the establishment of fresh cases against the accused, such adjournment should be granted, and the prisoner be remanded or bailed, as provided for by section 21. The witnesses also should be directed to be in attendance again at the time of adjournment.

Proceeding after an adjournment.]—After a remand, on the case being resumed, the depositions previously taken should be read over, and if the witnesses already examined have any additional evidence to give, it should be then taken, the prisoner being at liberty to cross-examine as before. The further evidence (if there be any), should then be taken with the same formalities as before stated.

*Course to be adopted when the evidence for the prosecution fails to make out a *primâ facie* case.*]—The evidence on the part of the prosecution being concluded, the justices will pause to consider whether or not a *primâ facie* case has been established; if the evidence has failed in doing this, the prisoner should be discharged. Upon this point the first portion of section 25 of the 11 & 12 Vict. c. 42, says as follows:—

That when all the evidence offered upon the part of the prosecution against the accused party shall have been heard, if the justice or justices of the peace then present shall be of opinion that it is not sufficient to put such accused party upon his trial for any indictable offence, such justice or justices shall forthwith order such accused party, if in custody, to be discharged as to the information then under inquiry.

Proceeding under the Juvenile Offenders, or Larceny Summary Jurisdiction Act.—At this stage, the justices will consider whether or not the case is one falling within the Juvenile Offenders Act, or the Larceny Summary Jurisdiction Act. If they consider that it does, and that it is desirable to proceed under either of those statutes, they will proceed as pointed out in the chapters devoted to those forms of procedure: (see *post.*)

Calling upon the Accused for his answer.—If the justices do not come to this conclusion, then they are to call upon the prisoner for his answer if he choose to give one. The 18th section of the above statute enacts—

That after the examination of all the witnesses on the part of the prosecution as aforesaid shall have been completed, the justice of the peace or one of the justices by or before whom such examination shall have been so completed as aforesaid shall, without requiring the attendance of the witnesses, read or cause to be read to the accused the depositions taken against him, and shall say to him these words, or words to the like effect:—"Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial." And whatever the prisoner shall then say in answer thereto shall be taken down in writing and read over to him, and shall be signed by the said justice or justices, and kept with the depositions of the witnesses, and shall be transmitted with them as hereinafter mentioned; and afterwards, upon the trial of the said accused person, the same may, if necessary, be given in evidence against him without further proof thereof, unless it shall be proved that the justice or justices purporting to sign the same did not, in fact, sign the same: provided always, that the said justice or justices, before such accused person shall make any statement, shall state to him and give him clearly to understand that he has nothing to hope from any promise of favour, and nothing to fear from any threat which may have been holden out to him to induce him to make any admission or confession of his guilt, but that whatever he shall then say may be given in evidence against him upon his trial notwithstanding such promise or threat.

The proper caution to be given to the prisoner.]— This section points out the course to be pursued ; namely, the depositions are to be read over to the accused, and then he is to be asked the following question:—“*Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial.*” Towards the latter end of the section, the justice is required to give the accused clearly to understand, that he has nothing to hope from any promise of favour, and nothing to fear from any threat, &c. Some practical difficulties at first arose in carrying out this section, from its being left in doubt, whether the caution contained at the latter part of the section should in all cases be given in addition to that contained in the first part. But in the case of *Reg. v. Sansome* (1 Den. C. C. 545 ; 19 L. J. 143, M. C.), it was held that the prisoner’s statement was admissible, though the second caution had not been given, which was only of importance where some previous inducement had in fact existed. It was, however, in that case recommended that the justices should always give the prisoner the second caution, as being the only course which would preclude all possibility of question as to the admissibility of his statement ; for as it was undecided whether that caution was absolutely necessary, when a previous inducement or threat had been held out, and the justices could never be certain whether such previous threat or inducement had or had not been held out, a perplexing question might arise as to the sufficiency of the first caution to remove the effect on the prisoner’s mind of such threat, &c., should it turn out in fact, that such threat &c. had been held out. Upon this point, Mr. Justice COLERIDGE, at the Cornwall summer assizes, 1850, in his charge to the grand jury, remarked :—“ Now it would simplify the matter very much, if, as well as printing the first part given in the schedule of the act, you were also to print the latter part, so as to prevent any difficulties

when the case comes on for trial." The question as to the legal necessity of giving the second caution, where some inducement has in fact been held out, has never yet been determined, probably from the very general practice which now obtains of giving both cautions at the same time upon all occasions. The double caution may be in these words:—"Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial; and I give you clearly to understand that you have nothing to hope from any promise of favour, and nothing to fear from any threat which may have been holden out to you to induce you to make any admission or confession of your guilt, but whatever you shall now say may be given in evidence against you upon your trial, notwithstanding such promise or threat."

The following is the form given for recording the statement of the accused:—

STATEMENT OF THE ACCUSED.

— } A. B. stands charged before the undersigned, (one) of Her
to wit. } Majesty's justices of the peace in and for the (county)
aforesaid, this day of , in the year of our Lord , for
that he, the said A. B., on , at , (f.c., as in the caption of
the depositions); and the said charge being read to the said A. B., and
the witnesses for the prosecution, C. D. and E. F., being severally ex-
amined in his presence, the said A. B. is now addressed by me as follows:
"Having heard the evidence, do you wish to say anything in answer to
the charge? You are not obliged to say anything unless you desire to
do so; but whatever you say will be taken down in writing, and may be
given in evidence against you upon your trial."* Whereupon the said
A. B. saith as follows: (here state whatever the prisoner may say, and
in his very words as nearly as possible. Get him to sign it, if he will.)

A. B.

Taken before me at , the day and year first above men-
tioned. J. S.

* If the additional caution has been given, it will be proper to add it in this place. (See ante, p. 150.)

The propriety on the part of the Prisoner, of his making a statement, or of withholding it.—If the prisoner has the assistance of a professional adviser, a most important duty will devolve upon him, namely: that of advising his client either to make a statement of facts to the Bench, exculpatory of himself, or to decline saying anything upon the subject. Upon a mere unsupported statement of facts, the Bench, of course, will never act, and hence it may at first appear that such a statement by a prisoner can be of no possible service to him. This, however, is not strictly correct: a plain unvarnished statement of facts can never injure a really innocent man, whilst their publication at that stage of the proceedings, may not only lead to inquiries on the part of the prosecution ultimately beneficial to himself, but may very greatly influence the Bench in their judgment upon the subject of admitting him to bail. Independently of which, a straightforward statement made at this time and persevered in throughout, not only carries with it a considerable degree of weight, but as it is taken down and comes under the eye ultimately of the judge who is to try the case, it gives him an insight into the entire subject-matter, which cannot but tend to the eliciting of the truth. In cases where such a statement has been made, it may undoubtedly be used by the prosecution against the prisoner, but if it be the honest statement of an innocent man, little fear need be entertained on this ground, whilst it is always considered honourable practice at the bar to put in such statement, though it in no way assist the prosecution, but aid the prisoner; and, indeed, learned judges have frequently interfered themselves, where there has been a disinclination on the part of the prosecution to put in the statement, and have directed it to be read. The importance in such a case of the statement of the prisoner being before the jury, to be commented on by his counsel in his address to them, cannot be too highly estimated. Many an innocent man owes his acquittal upon his trial entirely to his having made a

straightforward statement to the Bench, upon the preliminary investigation.

What has here been said, applies only to cases where the statement appears to be that of an innocent man. If the professional adviser has any belief in his client's guilt, the policy of observing silence is perfectly obvious; cases undoubtedly will occur in which it will be advisable even for an innocent man to remain silent, merely informing the Bench that he reserves his defence for a future time, the existence of a deep-laid conspiracy against him, or of a charge supported by false and perjured witnesses, may suggest the propriety of withholding for the present that statement of facts, the disclosure of which, whilst it might not be sufficient to induce the Bench to dismiss the charge, might enable the other party successfully to direct their artifices into a quarter where it is desirable they should be unfelt. Here, at this juncture it is, that the advice of a professional man becomes of such importance.

Address to the Bench by the Counsel or Attorney of the Accused.—It is not unusual at this state of the proceedings, for the counsel or attorney of the accused to address the Bench on his behalf, pointing out the circumstances which in his judgment should lead them to dismiss the charge; and although of strict right such a course may not be permitted, nevertheless it is one which may well be tolerated as tending at the most to no other inconvenience than a little loss of time, whilst much profit may be derived therefrom, particularly with a view to the question of bail.

In this particular too the professional adviser will exercise a discretion. By addressing the Bench upon his client's case, he necessarily exposes the weak points of the prosecution, and shows by what line of defence he hopes to draw his client through his difficulty, a course which it is needless to observe is one of unmitigated evil, should his efforts not result in his client's immediate discharge. If, therefore, the case

presented by the prosecutor be one that necessarily will lead to a committal, an address to the Bench in exculpation of the prisoner is a proceeding which cannot be too carefully avoided.

*Calling Witnesses on behalf of the Prisoner.]—*It may be, that the prisoner is in a position to rebut by evidence the case established against him, and that he is desirous of calling witnesses. Formerly it was doubted whether or not it was the duty of the magistrates to hear this evidence, but the received opinion at the present day is, that it *is* their duty. In the absence of any judicial decision upon the subject, it may be convenient to refer to the opinion of four very eminent and learned personages, namely, the late Attorney-General (now Chief Justice of the Common Pleas), Mr. Crompton (now Mr. Justice Crompton), and Messrs. Ellis and Hall, given upon a case submitted to them by the magistrates of Leeds. That case raised (*inter alia*) the following questions:—

First. Is it incumbent on the magistrate before whom an indictable offence is in course of preliminary investigation, to hear and examine witnesses adduced by the *prisoner* as his answer or defence to the charge against him; or has the magistrate any discretion to receive or reject such evidence; and if any discretion, of what kind or nature is it, and how ought it to be exercised by him?

Second. If the prisoner's witnesses are to be heard and examined, should those examinations take place *after* the prisoner has made his voluntary statement, or at what other state of the proceedings; and should the examinations of the prisoner's witnesses be *viva voce* or be in writing, and if the latter, ought they to be signed by the witnesses and the magistrate in the same way as examinations taken on the part of the prosecution?

Third. If the examinations of the prisoner's witnesses are to be reduced into writing, it is the duty of the committing magistrate to transmit the same, with the

examinations taken on the part of the prosecution, to the assizes or sessions where the prisoner is to be tried?

Fourth. It is the duty of the committing magistrate to bind over the *prisoner's* witnesses (who have been examined) to appear and give evidence on the trial, or has the magistrate any and what discretion on the subject, and how is that discretion to be exercised?

To these questions the following answers were given:—"The law on the subject of the examination of witnesses adduced by prisoners on their examination before justices of the peace, appears to us to be open to considerable doubt, which it would be desirable to have cleared up by further legislation.

"*First.* The question firstly submitted to us is certainly not free from difficulty, but considering that the practice under the old statute (1 & 2 Phil. & M. c. 13, and 2 & 3 Phil. & M. c. 10), as stated by Dalton, Comt. Just. ch. 165 (ed. 1746), was to examine a prisoner's witnesses, and that the language of the 11 & 12 Vict. c. 42, s. 17, admits of such a construction, and that the interests of justice require it, we think that it is incumbent on magistrates to hear and examine such of the witnesses offered by a prisoner as appear (in the language of the statute) to know the facts and circumstances of the case.

"*Second.* The 18th section prescribes that after the examinations of the witnesses on the part of the prosecution shall have been completed, the justices shall proceed as therein directed. This seems to point out that the stage in the inquiry at which the prisoner is to be called upon for his statement (if he choose to make one), is when the examination of the witnesses for the prosecution has been completed, and this will in general be the most natural and convenient time for taking the examinations of the prisoner's witnesses; but some of us think that the magistrates have a discretion in this respect, and it may be a question whether the party charged is not entitled to make a statement after he knows all that will be on the examinations. The examination of the prisoner's witnesses ought to be taken

vivâ voce, and reduced to writing, signed, and certified in the same way as examinations taken on the part of the prosecution.

"*Third.* We think it is the duty of the committing magistrate to transmit the examinations of the prisoner's witnesses with the examinations of the witnesses for the prosecution.

"*Fourth.* We think it is not the duty of the magistrate to bind over the prisoner's witnesses, with the exception of any of such witnesses who, though adduced for the prisoner, give evidence which appears to be material for the prosecution; and it appears to us that the magistrate has no discretion in the matter, inasmuch as, by the statute, the recognizance can be conditioned only to give evidence against the party accused."

The policy of calling Witnesses for the Prisoner.]—

As regards the policy of calling witnesses on the part of the prisoner, this will depend very greatly upon the nature of the case established by the prosecution, and the probable result of the inquiry. If the case established is such that the proof adduced on the part of the prisoner will amount but at most to a conflict of evidence, it will be most injudicious to make use of it, since, though the preponderance may be somewhat in the prisoner's favour, the justices would ultimately decide upon committing for trial, it being no part of their duty to determine as to the guilt or innocence of a party under such circumstances. There are, however, many cases of *primâ facie* guilt which the accused, by evidence, may be enabled so to explain as to clear up at once the imputation resting upon him. Thus, upon a charge of larceny, it may be, that the only proof of guilt against him is his possession of the stolen property, and it may happen that he is in a situation to show, by highly respectable testimony that he came possessed of the property in a perfectly fair and honest manner. Indeed, in all those cases where the criminalty of the party rests merely upon a presumption of law which the accused is enabled

to explain by evidence, such evidence may be adduced with a reasonable expectation of success. The question to be asked under such circumstance, before adducing evidence, should be this:—Will the production of the evidence be most likely to result in the discharge of the prisoner? If it will, then it will be judicious to offer it; but, if such a result is not likely, then will its production be most unadvisable.

It is sometimes imagined that if the prisoner has exculpatory evidence, and fails to offer it at the time of the preliminary examination, advantage will be taken of the omission on his afterwards producing it upon his trial: and undoubtedly there is occasionally reason for this apprehension, though it is exceedingly unfair to press this against an accused party, and learned judges have often reprehended observations which have been made upon this ground. In the case of *Reg. v. Clark* (5 Cox C. C. 230), the prisoner's counsel, in addressing the jury, observed that he should call witnesses to prove an *alibi*, that these witnesses were not examined before the magistrate, and perhaps some observations might be made on that account, as was often done in similar cases, but that the witnesses went to the magistrates' meeting, and were not called by the advice of the prisoner's attorney. Upon this, POLLOCK, C. B., said that "in his opinion no such remark ought to be made as to witnesses not being called for a prisoner when he is being examined before the magistrates; and, if made, it would be very improper. Where a prisoner was clearly spoken to by one or more persons as the person by whom a crime was committed, it would be the duty of the magistrate to commit, and it would be quite useless to call witnesses on the part of a prisoner either to prove an *alibi* or anything else in his favour; it would be a useless expense to call them twice to prove the same thing, and a thing which no discreet attorney ought to advise his client to incur. That had always been his opinion, and therefore he never allowed such observations to be made."

Mode of examining, &c. Prisoner's Witnesses.—If the prisoner resolves upon calling his witnesses, they will be sworn and examined in the same way as the witnesses for the prosecution, their evidence being carefully taken down by the justices' clerk. Each witness will be subject to cross-examination, and re-examination in like manner, and so, until the whole evidence is disposed of.

Course to be pursued where a Prisoner accounts for the possession of stolen property.—It will sometimes occur where a party is charged with theft, and the only evidence against him is that of a recent possession of the stolen article, that he defends himself by asserting that he received the property in question from a particular individual whom he names. If such person so named is procurable, and there is nothing to show that the statement of the prisoner is an utter fabrication, he should be sent for and examined as to the alleged fact. Upon this point, two or three judges have expressed a strong opinion. In *Reg. v. Crowhurst* (1 Car. & Kir. 370), the prisoner was indicted for stealing a piece of wood, the property of a person named Harman; and it appeared from the evidence given on the part of the prosecution, that on the piece of wood being found by a police constable in the prisoner's shop about five days after it was lost, he (the prisoner), stated that he bought it from a person named Nash, who lived about two miles off. Nash was not produced as a witness for the prosecution, and the prisoner did not call any witnesses. Mr. Baron ALDERSON, in summing up, said: "In cases of this nature, you should take it as a general principle, that where a man in whose possession stolen property is found, gives a reasonable account of how he came by it, as by telling the name of the person from whom he received it, and who is known to be a real person, it is incumbent on the prosecutor to show that that account be false; but if the account given by the prisoner be unreasonable or improbable on the face of it, the onus of proving its

truth lies on him. Suppose, for instance, a person were to charge me with stealing his watch, and I were to say I bought it from a particular tradesman whom I name, that is *primâ facie* a reasonable account, and I ought not to be convicted of felony, unless it is shown that that account is a false one." This ruling was confirmed in the subsequent case of *Reg. v. Hughes* (1 Cox C. C. 176), and in the more recent case of *Reg. v. Smith* (2 Car. & Kir. 107), in which Lord DENMAN, C. J., not only approved of it, but expressly laid down his view of the duties of justices in such a case. His Lordship said: "I quite agree with the case of *Reg. v. Crowhurst*, which is very correctly reported. It was mentioned to me by Baron Alderson at the time when it occurred. If a person in whose possession stolen property is found, give a reasonable account of how he came by it, and refer to some known person as the person from whom he received it, the magistrate should send for that person and examine him, as it may be that his statement may entirely exonerate the accused person and put an end to the charge." This rule will of course apply only to the case of a reference not inconsistent with the other facts of the case; for if the prisoner himself have given various accounts of how he came possessed of the property (*Reg. v. Debley*, 2 Car. & Kir. 818), or if circumstances exist in the case which render the account unreasonable, or its truth improbable, the burthen of producing the party referred to cast upon the accused: (*Reg. v. Harmer*, 2 Cox C. C. 487; *Reg. v. Wilson*, 2 Dear. C. C. 157.)

Decision of Justices as to discharging or committing the Prisoner.—All the evidence in the case having been adduced, the justices will decide upon the course they will adopt, namely, whether they will order the accused to be discharged or will commit him for trial. Upon this subject the 25th section of the 11 & 12 Vict. c. 42, contains the following directions:—

That when all the evidence offered upon the part of the prosecution

against the accused party shall have been heard, if the justice or justices of the peace then present shall be of opinion that it is not sufficient to put such accused party upon his trial for any indictable offence, such justice or justices shall forthwith order such accused party, if in custody, to be discharged as to the information then under inquiry; but if, in the opinion of such justice or justices, such evidence is sufficient to put the accused party upon his trial for an indictable offence, or if the evidence given raise a strong or probable presumption of the guilt of such accused party, then such justice or justices shall, by his or their warrant, commit him to the common gaol or house of correction for the county, riding, division, liberty, city, borough or place to which by law he may now be committed, or in the case of an indictable offence committed on the high seas or on land beyond the sea, to the common gaol of the county, riding, division, liberty, city, borough or place within which such justice or justices shall have jurisdiction, to be there safely kept until he shall be thence delivered by due course of law, or admit him to bail as hereinbefore mentioned.

Ordering the Prisoner to be discharged.—If the justices come to the determination to discharge the accused, he should at once be set at liberty. This discharge, however, will not operate to prevent his being again apprehended, and brought before them upon the same charge, if additional facts against him should transpire.

The discretion of Justices in deciding to commit.—The section before quoted very fully explains the grounds upon which the justices should act in deciding to commit for trial, namely, *the evidence given raising a strong or probable presumption of the guilt of the accused party.*

Upon a subject which is so entirely within the discretion of the justices, it is impossible to lay down general rules for their guidance. In *Cox v. Coleridge* (1 B. & C. 50), Mr. Justice BAYLEY observes, "I think that a magistrate is clearly bound, in the exercise of a sound discretion, not to commit any one unless a *prima facie* case is made out against him by witnesses entitled to a reasonable degree of credit." Justices in

the performance of this portion of their duties will not *balance* the evidence, and decide according as it preponderates, for this would, in fact, be taking upon themselves the functions of the petty jury, and be trying the case; but they will ask themselves, whether or not the evidence, as it stands, make out a strong or probable or even a *conflicting* case of guilt: in any one of which cases they will do right in committing the party to trial. If, however, from the slender nature of the evidence, the unworthiness of the witnesses, or the conclusive proof of innocence produced on the part of the prisoner, they feel that the case is not sustained, and that if they committed for trial a verdict of acquittal must be the necessary consequence, they will at once discharge the accused, and so put an end to the inquiry as far as they are themselves concerned.

Duties of Justices under the Juvenile Offenders and Larceny Summary Jurisdiction acts.—As the functions and duties of justices under the Juvenile Offenders Acts (10 & 11 Vict. c. 82, and 13 Vict. c. 37), and under the Larceny Summary Jurisdiction Act (18 & 19 Vict. c. 126), are peculiar and special, it has been thought advisable not to describe them here, but to treat of them by themselves in distinct chapters which will be found at a subsequent part of the volume.

CHAPTER XI.

COMMITTING FOR TRIAL—BINDING OVER PROSECUTOR
AND WITNESSES—ADMITTING TO BAIL.

Committing to the Sessions—Cases in which the Sessions have not jurisdiction.—If the justices determine upon committing the accused to take his trial, they will consider whether such committal should be to the sessions or to the assizes. There are numerous classes of cases over which the quarter sessions have no jurisdiction, and which can be tried alone at the assizes (unless removed into the Court of Queen's Bench.) If the case, therefore, fall within one of these classes the commitment must be to the assizes. These classes of cases are now all enumerated in the 5 & 6 Vict. c. 38. Section 1 of that statute states:—

That after the passing of this act, neither the justice of the peace acting in and for any county, riding, division or liberty, nor the recorder of any borough, shall at any session of the peace, or at any adjournment thereof, try any person for any treason, murder or capital felony; or for any felony which, when committed by a person not previously convicted of felony, is punishable by transportation beyond the seas for life; or for any of the following offences (that is to say):

1. Misprision of treason.
2. Offences against the Queen's title, prerogative, person or government, or against either House of Parliament.
3. Offences subject to the penalties of præmunire.
4. Blasphemy, and offences against religion.
5. Administering or taking unlawful oaths.
6. Perjury, and subornation of perjury.
7. Making or suborning any other person to take a false oath, affirmation or declaration, punishable as perjury or as a misdemeanor.
8. Forgery.

9. Unlawfully and maliciously setting fire to crops of corn, grain, or pulse, or to any part of a wood, coppice or plantation of trees, or to any heath, gorse, furze or fern.

10. Bigamy, and offences against the laws relating to marriage.

11. Abduction of women and girls.

12. Endeavouring to conceal the birth of a child.

13. Offences against any provision of the laws relating to bankrupts and insolvents.

14. Composing, printing, or publishing blasphemous, seditious, or defamatory libels.

15. Bribery.

16. Unlawful combinations and conspiracies, except conspiracies or combinations to commit any offence which such justices or recorder respectively have or has jurisdiction to try when committed by one person.

17. Stealing or fraudulently taking or injuring or destroying records or documents belonging to any court of law or equity, or relating to any proceedings therein.

18. Stealing or fraudulently destroying or concealing wills or testamentary papers, or any document or written instrument being or containing evidence of the title to any real estate, or any interest in lands, tenements or hereditaments.

With the exception of the foregoing cases, the quarter sessions have a general jurisdiction to try all indictable offences. If the case, therefore, be one over which the quarter sessions have *not* jurisdiction, the commitment must be to the next assizes. If, however, the charge be one over which the quarter sessions *have* jurisdiction, it will, nevertheless, be proper in certain cases to commit for trial to the assizes. In all cases of unusual difficulty, the justices *may* so commit; and this under the proviso in their commission, "that if a case of difficulty upon the determination of any of the premises before you, or any two or more of you, shall happen to arise, then let judgment in no wise be given thereon before you, or any two or more of you, unless in the presence of one of our justices of the one or other Bench, or of one of our justices appointed to hold the assizes in the aforesaid county." However, with the limited and

defined jurisdiction of the quarter sessions at the present day, and the power of reserving a case for the opinion of the Court for Crown Cases Reserved, under the provisions of the 11 & 12 Vict. c. 78, no cases can well arise on this ground, justifying the magistrates in abstaining from committing to the sessions.

When to commit to the Assizes.—The fact which will determine the justices in committing to the assizes rather than to the sessions, in a case within the jurisdiction of the latter court, will be that of the assizes occurring before the next sessions. The circuits of the judges throughout England and Wales take place half-yearly, within a day or two of the same period in each year, and the order in which the various counties is taken is usually the same; and, except with a very few counties during the spring circuit, these assizes never conflict with the period of holding the quarter sessions; and with respect to those cases in which it does conflict, provision is made as has been shown at page 4. It being, therefore, well known at all times which will first arrive, the period for the holding of the quarter sessions or that for the holding of the assizes, justices need be under no difficulty in deciding as to which tribunal to commit. The importance of bearing in mind which court will first assemble, is seen from the fact that where prisoners have been committed to the sessions, and an assizes has intervened, judges have often, on the non-appearance of the prosecutors and witnesses, directed the prisoners so committed to be discharged upon proclamation, considering it to be their imperative duty under their commission to deliver the gaol, though some doubt certainly exists as to the legal necessity of such a course being pursued.

It was long supposed that the jurisdiction of the sessions was suspended or determined by the arrival in the county of the judges of assize. This, however, has been decided not to be so; though it was suggested that it would be highly inconvenient and improper,

generally speaking, for the magistrates of a county to hold their sessions concurrently with the assizes even in a different part of the county : (*Smith v. The Queen* (in error), 18 L. J. 207, M. C.; 3 Cox C. C. 586.)

Committals to Borough Sessions.]—With regard to committals to *borough* sessions, other views are to be considered. These sessions, as being established with an object to *local* convenience, stand upon a footing differing from the county sessions, and the question of the occurrence of the assizes may altogether be disregarded. The committals should in all cases therefore be to the borough sessions whenever they may occur, the purpose of such sessions being to bring the administration of criminal justice home to the doors of the burgesses, which object would be defeated if they were compelled to travel to the assizes twice in the year to obtain that which they could so much easier and so much more economically obtain in their own town.

Commitment to Borough Sessions.]—Where there is a local court of quarter sessions, the recorder, in fixing his sessions, will, however, be guided by the circumstance of whether or not the borough has a gaol of its own. If it have, then it is immaterial when the borough sessions take place, since the prisoners committed for trial will remain in such gaol until tried or otherwise disposed of at such sessions; the judges of assize having no jurisdiction over such gaol. If, however, the borough have no gaol of its own, and its prisoners are committed for safe custody under a contract to the county gaol or house of correction, then, upon the intervening of the assizes before the borough sessions, such prisoners will be subject to be disposed of by the judges under their commission of general gaol delivery.

Commitment when Bail not given.]—Having decided upon committing the accused to trial, it will be a question probably whether or not he should be admitted to bail. The case may be one in which the justices

decline to take bail, or the accused cannot procure it, in either of which cases he will be at once committed to prison. It will be convenient to postpone for the present the question of *bail*.

If the accused is to be committed to custody pursuant to the 25th section of the 11 & 12 Vict. c. 42 (*ante*, p. 160), the following is the form of the warrant provided by the act :—

WARRANT OF COMMITMENT.

— } To the constable of , and to the keeper of the (*House*
to wit. } of Correction), at , in the said (county) of .

Whereas A. B. was this day charged before me, J. S., one of Her Majesty's justices of the peace in and for the said (county) of , on the oath of C. D. of , (*farmer*), and others, for that (*gc., stating shortly the offence*): these are therefore to command you the said constable of , to take the said A. B., and him safely to convey to the (*House of Correction*) at aforesaid, and there to deliver him to the keeper thereof, together with this precept; and I do hereby command you, the said keeper of the said (*House of Correction*), to receive the said A. B. into your custody in the said (*House of Correction*), and there safely keep him (*) until he shall be thence delivered by due course of law.

Given under my hand and seal this day of , in the
year of our Lord , at , in the (county) aforesaid.

J. S. [L. S.]

The foregoing form, though given by the statute, is open to the practical objection that it gives no information to the gaoler as to the trial of the prisoner—namely, whether at the sessions or assizes. It is, therefore, suggested as an improvement, that after the asterisk*, the following words should be inserted: viz. "*until the next assizes (or quarter sessions of the peace) to be holden at in and for the said county or.*"

Execution of Warrant of Commitment—Receipt from Gaoler—Expenses of Constable.—Upon this warrant being delivered to the constable, he will at once convey the prisoner to gaol, where he will receive from the gaoler a receipt for his delivery. To this receipt the

constable will attach a list of the items of his costs and expenses in conveying the accused to gaol; and upon his laying this before either the committing justice or some other justice of the county or district, and its being examined and allowed according as the statute points out, he will make an order upon the treasurer of the county, &c., for payment. If, however, it appear that the prisoner has sufficient money himself to pay these expenses, or a part, the justice in his discretion may order it to be so applied. In cases in which the constable conveying the prisoner is paid by salary (as the county or borough constabulary), and incurs no additional expense, nothing, of course, will be allowed.

The section of the 11 & 12 Vict. c. 42, upon this subject is the 26th, which enacts as follows :—

That the constable or any of the constables, or other persons to whom the said warrant of commitment shall be directed, shall convey such accused person therein named or described to the gaol or other prison mentioned in such warrant, and there deliver him, together with such warrant, to the gaoler, keeper or governor of such gaol or prison, who shall thereupon give such constable or other person so delivering such prisoner into his custody a receipt for such prisoner, setting forth the state and condition in which such prisoner was when he was delivered into the custody of such gaoler, keeper or governor; and in all cases where such constable or other person shall be entitled to his costs or expenses for conveying such person to such prison as aforesaid, it shall be lawful for the justice or justices who shall have committed the accused party, or for any justice of the peace in and for the said county, riding, division or other place of exclusive jurisdiction wherein the offence is alleged in the said warrant to have been committed, to ascertain the sum which ought to be paid to such constable or other person for conveying such prisoner to such gaol or prison, and also the sum which should reasonably be allowed him for his expenses in returning; and thereupon such justice shall make an order upon the treasurer of such county, riding, division, liberty, or place of exclusive jurisdiction, or if such place of exclusive jurisdiction shall be contributory to the county rate of any county, riding or division, then upon the treasurer of such county, riding or division respectively or, in the county of *Middlesex*, upon the overseers of the poor of the parish or place within which the offence is

alleged to have been committed, for payment to such constable or other person, of the sums so ascertained to be payable to him in that behalf ; and the said treasurer or overseers, upon such order being produced to him or them respectively, shall pay the amount thereof to such constable or other person producing the same, or to any person who shall present the same to him or them for payment: provided, nevertheless, that if it shall appear to the justice or justices by whom any such warrant of commitment against such prisoner shall be granted as aforesaid, that such prisoner hath money sufficient to pay the expenses, or some part thereof, of conveying him to such gaol or prison, it shall be lawful for such justice or justices in his or their discretion to order such money, or a sufficient part thereof, to be applied to such purpose.

The following forms are provided for carrying out the foregoing section, after the delivering of the prisoner to the gaoler:—

GAOLER'S RECEIPT TO THE CONSTABLE FOR THE PRISONER, AND JUSTICE'S ORDER THEREON FOR PAYMENT OF THE CONSTABLE'S EXPENSES IN EXECUTING THE COMMITMENT.

I hereby certify that I have received from W. T., constable of the body of A. B., together with a warrant under the hand and seal of J. S., esquire, one of Her Majesty's justices of the peace for the (county) of ; and that the said A. B. was (sober, or as the case may be) at the time he was so delivered into my custody.

P. K.

Keeper of the House of Correction (*or*
Common Gaol) at .

Constable's expenses.

£ s. d.

For conveying the above A. B. from , to , }
(by railway) at per mile }
For conveying him to and from railway station . . .
For subsistence of prisoner whilst in custody after com- }
mitment, days, at per day }
For his lodging, nights, at per night . . .
Constable, days, at per day (one) }
assistant (if necessary), days, at per day . }

Total £

To B. W. esquire, treasurer of the said (county) of .

Whereas W. T., constable of in the (county) of , hath produced unto me J. P., one of Her Majesty's justices of the peace in and for the said (county) of , (wherein the offence hereinafter mentioned is alleged to have been committed) the above receipt of P. K., keeper of the (*House of Correction*) at ; and whereas, in pursuance of the statute in such case made and provided, I have ascertained that the sum which ought to be paid to the said W. T. for conveying the said A. B. from , in the said (county) of , to the said (*House of Correction*) is , and that the reasonable expenses of the said W. T. in returning will amount to the further sum of , making together the sum of . These are therefore to order you as such treasurer of the said (county) of , to pay unto the said W. T. the said sum of , according to the form of the statute in such case made and provided, for which payment this order shall be your sufficient voucher and authority.

Given under my hand this day of 185 .

J. P.

Received the day of 185 , of the treasurer of the (county) of , the sum of , being the amount of the above order.

£———

Of binding over the Prosecutor and Witnesses.—

If the case is to be sent to the sessions or assizes for trial, it will be the duty of the justices to bind over the prosecutor and witnesses respectively to prosecute and give evidence.

Who to be bound over to Prosecute.—There appears to be no general statutable provision pointing out *who* is to be the prosecutor; nor is it very clear that any one in particular can be *compelled* to enter into a recognizance to prosecute. In most cases the facts point out *who should* be the prosecutor—namely, the injured party, who most frequently, is the principal witness. It often, however, occurs that the party injured is incapable of standing in such a position, either from tender years or death, and there may be no one who feels an interest sufficiently strong to volunteer himself as prosecutor. In such case it is usual for the

[M. C.]

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justices to require some public functionary, such as the high constable or one of the county or borough constabulary, to take upon himself this office, and although we know of no penalties which can be inflicted in such a case upon refusal, there is never found in practice any difficulty upon the subject, the duty of a prosecutor being exceedingly simple, and the expenses allowed being to a constable a sufficient remuneration, in addition to his ordinary pay, to induce him readily to undertake the duty. Under the 14 Vict. c. 11, where a complaint is made of offences upon a servant or apprentice under that act, or of any bodily injury inflicted upon any poor person under the age of sixteen years, for which the party committing it is liable to be indicted; and the circumstances of which offence amount in point of law to a felony, or an attempt to commit a felony, or an assault to commit a felony, and two justices taking the examination shall certify that they deem it necessary that the prosecution should be conducted by the guardians, or if no guardians, by the overseers of the parish in which the offence was committed, such guardians or overseers shall, upon service of such certificate or a duplicate thereof, conduct the prosecution: (ss. 6 and 7.)

Binding over Prosecutor and Witnesses.—Upon the subject generally of binding over the prosecutor and witnesses, the 11 & 12 Vict. c. 42, contains some practical directions. By section 20 it is enacted—

That it shall be lawful for the justice or justices before whom any such witness shall be examined as aforesaid to bind, by recognizance, the prosecutor and every such witness to appear at the next court of oyer and terminer or gaol delivery, or superior court of a county palatine, or court of general or quarter sessions of the peace at which the accused is to be tried, then and there to prosecute, or to prosecute and give evidence, or to give evidence, as the case may be, against the party accused, which said recognizance shall particularly specify the profession, art, mystery or trade of every such person entering into or acknowledging the same, together with his christian and surname, and the parish, township or place of his residence; and if his residence be in a city, town

or borough, the recognizance shall also particularly specify the name of the street and the number (if any) of the house in which he resides, and whether he is owner or tenant thereof or a lodger therein; and the said recognizance, being duly acknowledged by the person so entering into the same, shall be subscribed by the justice or justices before whom the same shall be acknowledged, and a notice thereof, signed by the said justice or justices, shall at the same time be given to the person bound thereby; and the several recognizances so taken, together with the written information (if any), the depositions, the statement of the accused and the recognizance of bail (if any) in any such case, shall be delivered by the said justice or justices, or he or they shall cause the same to be delivered to the proper officer of the court in which the trial is to be had, before or at the opening of the said court on the first day of the sitting thereof, or at such other time as the judge, recorder or justice who is to preside in such court at the said trial shall order and appoint: provided always, that if any such witness shall refuse to enter into or acknowledge such recognizance as aforesaid, it shall be lawful for such justice or justices of the peace, by his or their warrant, to commit him to the common gaol or house of correction for the county, riding, division, liberty, city, borough or place in which the accused party is to be tried, there to be imprisoned and safely kept until after the trial of such accused party, unless in the mean time such witness shall duly enter into such recognizance as aforesaid before some one justice of the peace for the county, riding, division, liberty, city, borough or place in which such gaol or house of correction shall be situate: provided nevertheless, that if afterwards, from want of sufficient evidence in that behalf, or other cause, the justice or justices before whom such accused party shall have been brought shall not commit him or hold him to bail for the offence with which he is charged, it shall be lawful for such justice or justices or any other justice or justices of the same county, riding, division, liberty, city, borough or place, by his or their order in that behalf, to order and direct the keeper of such common gaol or house of correction where such witness shall be so in custody to discharge him from the same, and such keeper shall thereupon forthwith discharge him accordingly.

The following forms are provided by the statute:—

RECOGNIZANCE TO PROSECUTE OR GIVE EVIDENCE.

— } Be it remembered that on the day of , in the
to wit. } year of our Lord , C. D., of , in the township

of _____, in the said (*county*), farmer (*or* C. D., of No. 2, _____ street, in the parish of _____, in the borough of _____ (*surgeon*), of which said house he is tenant), personally came before me, one of Her Majesty's justices of the peace for the said (*county*), and acknowledged himself to owe to our Sovereign lady the Queen the sum of _____, of good and lawful money of Great Britain, to be made and levied of his goods and chattels, lands and tenements, to the use of our said lady the Queen, her heirs and successors, if he, the said C. D., shall fail in the condition indorsed.

Taken and acknowledged the day and year first above mentioned
at _____, before me, _____ J. S.

CONDITION TO PROSECUTE.

The condition of the within-written recognizance is such, that whereas one A. B. was this day charged before me J. S., justice of the peace within mentioned, for that (*ſc.*, as in the caption of the depositions); if therefore he the said C. D. shall appear at the next court of oyer and terminer, or general gaol delivery (*or*, at the next court of general quarter sessions of the peace) to be holden in and for the (*county*), of _____, (*) and there prefer, or cause to be preferred, a bill of indictment for the offence aforesaid against the said A. B., and there also duly prosecute such indictment, then the said recognizance to be void, or else to stand in full force and virtue.

CONDITION TO PROSECUTE AND GIVE EVIDENCE.

Same as the last form to the asterisk () and then thus :* and there prefer, or cause to be preferred, a bill of indictment against the said A. B. for the offence aforesaid, and duly prosecute such indictment, and give evidence thereon as well to the jurors who shall then inquire of the said offence, as also to them who shall pass upon the trial of the said A. B., then the said recognizance to be void, or else to stand in full force and virtue.

CONDITION TO GIVE EVIDENCE.

Same as the last form but one to the asterisk (), and then thus :* and there give such evidence as he knoweth upon a bill of indictment to be then and there preferred against the said A. B. for the offence aforesaid, as well to the jurors who shall there inquire of the said offence, as also to the jurors who shall pass upon the trial of the said A. B.; if the said bill shall be found a true bill, then the said recognizance to be void, or else to stand in full force and virtue.

NOTICE OF THE SAID RECOGNIZANCE TO BE GIVEN TO THE PROSECUTOR AND HIS WITNESSES.

— } Take notice that you C. D., of , are bound in the sum
to wit. } of , to appear at the next court of (*general quarter sessions of the peace*) in and for the (*county*) of , to be holden at , in the said (*county*) and then and there (*prosecute and*) give evidence against A. B.; and unless you then appear there and (*prosecute and*) give evidence accordingly, the recognizance entered into by you will be forthwith levied on you. Dated this day of , 185 .

J. S.

The practical mode of taking a recognizance, has already been pointed out (*ante*, p. 49.)

Commitment of Witness for refusing to enter into Recognizance.—It has been seen that by sect. 20 of the 11 & 12 Vict. c. 42 (*ante*, p. 171), a witness who refuses to enter into or acknowledge his recognizance, may be committed to prison until the trial, unless before then he consents to enter into it. In such a case the warrant of commitment is to be as follows :—

COMMITMENT OF WITNESS FOR REFUSING TO ENTER INTO THE RECOGNIZANCE.

— } To the constable of , and to the keeper of the (*House to wit.* } of *Correction*) at , in the said (*county*) of .

Whereas A. B. was lately charged before the undersigned (*one*) of Her Majesty's justices of the peace in and for the said (*county*) of , for that (*etc., as in the summons to witness*), and it having been made to appear to (*me*) upon oath, that E. F., of , was likely to give material evidence for the prosecution, (*I*) duly issued (*my summons to the said E. F., requiring him to appear*) before (*me*) on , at , or before such other justice or justices of the peace as should then be there, to testify what he should know concerning the said charge so made against the said A. B. as aforesaid; and the said E. F. now appearing before (*me*), or being brought before (*me*) by virtue of a warrant in that behalf, to testify as aforesaid, hath been now examined by (*me*) touching the premises, but being by (*me*)

required to enter into a recognizance conditioned to give evidence against the said A. B., hath now refused so to do: these are therefore to command you the said constable to take the said E. F., and him safely to convey to the (*House of Correction*) at , in the (*county*), of , aforesaid, and there deliver him to the said keeper thereof, together with this precept; and I do hereby command you, the said keeper of the said (*House of Correction*) to receive the said E. F. into your custody in the said (*House of Correction*), there to imprison and safely keep him until after the trial of the said A. B. for the offence aforesaid, unless in the mean time such E. F. shall duly enter into such recognizance aforesaid, in the sum of pounds, before some one justice of the peace for the said (*county*), conditioned in the usual form to appear at the next court of (oyer and terminer, or general gaol delivery, or quarter sessions of the peace), to be holden in and for the (*county*) of , and there to give evidence before the grand jury upon any bill of indictment which may then and there be preferred against the said A. B., for the offence aforesaid, and also to give evidence upon the trial of the said A. B. for the said offence, if a true bill should be found against him for the same.

Given under my hand and seal this day of , in the year of our Lord , at , in the (*county*) aforesaid.
J. S. [L. S.]

SUBSEQUENT ORDER TO DISCHARGE THE WITNESS.

— } To the keeper of the (*House of Correction*) at , in the
to wit. } (*county*) of .

Whereas by (*my*) order dated the day of (*instant*), reciting that A. B. was lately before then charged before (*me*) for a certain offence therein mentioned, and that E. F. having appeared before me, and being examined as a witness for the prosecution in that behalf, refused to enter into a recognizance to give evidence against the said A. B., and I therefore thereby committed the said E. F. to your custody, and required you safely to keep him until after the trial of the said A. B. for the offence aforesaid, unless in the meantime he should enter into such recognizance as aforesaid. And whereas for want of sufficient evidence against the said A. B., the said A. B. has not been committed or holden to bail for the said offence, but on the contrary thereof, has been since discharged, and it is therefore not necessary that the said E. F. should be detained longer in your custody;

these are therefore to order and direct you, the said keeper, to discharge the said E. F. out of your custody as to the said commitment, and to suffer him to go at large.

Given under my hand and seal this day of in the
year of our Lord , at , in the (county) aforesaid.

J. S. [L. S.]

Binding over Minors and Married Women.—Before the passing of the 11 & 12 Vict. c. 42, when any of the witnesses were *minors* or *married women*, it was usual to require the father or husband or other competent person to become bound for their appearance; inasmuch as they were deemed incompetent to bind themselves, and in default of their being enabled to obtain such surety, they were frequently committed to gaol for safe custody until the trial took place. Since, however, the passing of this statute, it may well be doubted if any power of the kind to commit exists; the statute itself is certainly silent on the subject, and as it purports to be a complete code for the guidance of the justices, and as the committal to prison under such circumstances would operate as a grievous hardship upon perfectly innocent parties, the better and safer course will be not to exercise such a power. If any of the witnesses, therefore, be minors or married women, it will be well to get the parents or husbands to enter into recognizances for them if they can be procured; but upon failure thereof, to take the recognizance of the witnesses themselves, it being at least questionable whether or not they could, since the statute seems to apply to all alike, take any ultimate advantage of the disability.

Notices to be given to Prosecutor and Witnesses.—Care will be taken that a notice in the form at page 173 be given to the prosecutor and each of the witnesses.

Admitting the Prisoner to Bail.—At this stage of the proceedings, the justices will probably be applied to, to take bail for the prisoner's appearance at the

time of trial; and, in coming to a decision upon the subject, they will be guided by many considerations.

It will, of course not be forgotten by the justices that the only purpose to be served by a committal to prison before trial, is that of securing at such trial the personal appearance of the accused; and in considering therefore, whether or not they will take bail for the appearance of the prisoner, every argument and every view must centre alone in this one object. If, therefore, the justices feel satisfied that by admitting the accused to bail his appearance to take his trial will not be perilled, their duty to take bail is perfectly obvious. Of course, upon such a subject many circumstances must be taken into consideration; and the probability of the prisoner's surrendering to take his trial will be more or less influenced by his position in life, the magnitude of the charge, the cogency of the evidence, and the probable severity of the punishment; it being always remembered that, whilst the probability of ultimate conviction increases the doubt of the prisoner's surrender, his actual or admitted guilt is not of itself a conclusive reason against admitting him to bail.

Upon the subject of admitting to bail, the 11 & 12 Vict. c. 42, contains some important provisions. The 23rd section of that statute enacts—

That where any person shall appear or be brought before a justice of the peace charged with any felony, or with any assault with intent to commit any felony, or with obtaining or attempting to obtain property by false pretences, or with a misdemeanor in receiving property stolen or obtained by false pretences, or with perjury or subornation of perjury or with concealing the birth of a child by secret burying or otherwise, or with wilful or indecent exposure of the person, or with riot, or with assault in pursuance of a conspiracy to raise wages, or assault upon a peace officer in the execution of his duty, or upon any person acting in his aid, or with neglect or breach of duty as a peace officer, or with any misdemeanor for the prosecution of which the costs may be allowed out of the county rate, such justice of the peace may in his discretion admit such person to bail upon his procuring and producing

such surety or sureties as in the opinion of such justice will be sufficient to insure the appearance of such accused person at the time and place when and where he is to be tried for such offence; and, thereupon, such justice shall take the recognizance of the said accused person and his surety or sureties conditioned for the appearance of such accused person at the time and place of trial, and that he will then surrender and take his trial, and not depart the court without leave; and in all cases where a person charged with an indictable offence shall be committed to prison to take his trial for the same, it shall be lawful at any time afterwards, and before the first day of the sitting or session at which he is to be tried, or before the day to which such sitting or session may be adjourned, for the justice or justices of the peace who shall have signed the warrant for his commitment, in his or their discretion, to admit such accused person to bail in manner aforesaid; or if such committing justice or justices shall be of opinion that, for any of the offences hereinbefore mentioned, the said accused person ought to be admitted to bail, he or they shall in such cases, and in all other cases of misdemeanor, certify on the back of the warrant of commitment his or their consent to such accused party being bailed, stating also the amount of bail which ought to be required, it shall be lawful for any justice of the peace attending or being at the gaol or prison where such accused party shall be in custody, on production of such certificate, to admit such accused person to bail in manner aforesaid; or if it shall be inconvenient for the surety or sureties in such a case to attend at such gaol or prison to join with such accused person in the recognizance of bail, then such committing justice or justices may make a duplicate of such certificate as aforesaid, and upon the same being produced to any justice of the peace for the same county, riding, division, liberty, city, borough or place, it shall be lawful for such last-mentioned justice to take the recognizance of the surety or sureties in conformity with such certificate, and upon such recognizance being transmitted to the keeper of such gaol or prison, and produced together with the certificate on the warrant of commitment as aforesaid, to any justice of the peace attending or being at such gaol or prison, it shall be lawful for such last-mentioned justice thereupon to take the recognizance of such accused party and to order him to be discharged out of custody as to that commitment, as hereinafter mentioned; and where any person shall be charged before any justice of the peace with any indictable misdemeanor other than those hereinbefore mentioned, such justice, after taking the examinations

in writing aforesaid, instead of committing him to prison for such offence, shall admit him to bail in manner aforesaid, or if he have been committed to prison, and shall apply to any one of the visiting justices of such prison, or to any other justice of the peace for the same county, riding, division, liberty, city, borough or place, before the first day of the sitting or session at which he is to be tried, or before the day to which such sitting or session may be adjourned, to be admitted to bail, such justice shall accordingly admit him to bail in manner aforesaid; and in all cases where such accused person in custody shall be admitted to bail by a justice of the peace other than the committing justice or justices as aforesaid, such justice of the peace so admitting him to bail shall forthwith transmit the recognizance or recognizances of bail to the committing justice or justices, or one of them, to be by him or them transmitted with the examinations to the proper officer.

The same section then provides against justices admitting to bail in cases of *treason*, and it contains also provisions for the condition of the recognizance where the defendant in cases of misdemeanor is entitled to traverse. But inasmuch as by the 15 & 16 Vict. c. 100, s. 127, the right to traverse is abolished, it is unnecessary to further refer to the subject.

In what cases Justices have a discretion—In what cases bound to receive Bail.—The duties and powers of justices upon the subject of admitting to bail are clearly pointed out by the foregoing section. It may therefore be laid down, that they have a *discretion* in taking or refusing to take bail :—

1. In all cases of *felony*.
2. Assaults with intent to commit any felony.
3. Any attempt to commit a felony.
4. Obtaining or attempting to obtain property by false pretences.
5. The misdemeanor of receiving property stolen or obtained by false pretences.
6. Perjury or subornation of perjury.
7. Concealing the birth of a child.
8. Indecent exposure of the person.
9. Riot.

10. Assault in pursuance of a conspiracy to raise wages.

11. Assault upon a peace officer in the execution of his duty, or upon any person acting in his aid.

12. Neglect or breach of duty as a peace officer.

13. Any misdemeanor for the prosecution of which the costs may be allowed out of the county rate.

In all other classes of misdemeanors, the defendant has a *right* to be admitted to bail; and, upon his tendering substantial sureties, bail ought not to be refused.

Duty with reference to receiving Bail.—To refuse bail in a case in which the defendant is entitled to it, is in the eye of the law a serious dereliction of duty, and may subject the justice to a criminal information: (*Reg. v. Badger*, 4 Q. B. 468; *Reg. v. Saunders*, 2 Cox C. C. 249.) When bail is offered in a case in which the defendant has a *right* to be bailed, the justice should be careful not to say anything by way of dissuasion, a magistrate not being justified in interfering to prevent a man from assisting his neighbour: (*Reg. v. Saunders, supra.*) Neither in such a case should the magistrate allow himself to be influenced in rejecting persons offered as bail on any views of a political nature: (*Reg. v. Badger, supra.*) The chief consideration will be the substantial character of the bail, and their ability to perform the condition of their recognizance.

Receiving Bail not a ministerial act.—It must not, however, be supposed that the duty of justices in cases where the defendant has a right to be bailed is merely *ministerial*. It is not so; some discretion is to be exercised by them, and even should they in such a case refuse bail, no action will lie against them if they appear to have acted without malice. In *Linford v. Fitzroy*, (18 L. J. 108, M. C.), the plaintiff had been charged (prior to the passing of the 11 & 12 Vict. c. 42) with assaulting a constable in the execution of his duty, and he offered two sufficient sureties as bail,

whom the defendant (a magistrate) refused to accept on the ground that on a previous occasion the plaintiff when bailed had absconded. Upon the trial, the jury found that *the defendant refused sufficient bail, but that he did not act maliciously*; and upon the case coming before the court above on the point of whether or not it was necessary for the plaintiff to prove express malice, the court held that the duty of a justice in accepting bail was essentially a judicial one; and that being so, he could not be made liable to an action for a mistake in doing or omitting to do anything in respect of that duty, unless he could be fixed with malice, which in the case before them had been negatived by the jury.

Not to receive Bail upon a charge of Murder.—Although a discretion is given to justices to bail in all cases of felony without exception, they never think of admitting to bail upon a charge of murder, even when there is no coroner's inquisition finding murder against the accused, or where the charge upon the trial will evidently fail in being supported, the responsibility in a case of that serious nature being alone left with the superior judges of the land.

Number of Sureties.—If the justices consent to take bail, they will state what sureties they will require, and to what amount. This is a matter entirely in their discretion, it being, however, borne in mind, that to demand *excessive bail* is unlawful, and so declared to be by the Declaration of Rights, 1 Will. & M. s. 2, c. 2; and that an action will lie at the suit of the party injured, or an indictment be supported; no fixed rule can, however, be laid down upon the subject, the circumstances of each case requiring the exercise of judgment and discretion. It is usual, however, to require two sureties, though there is no reason why, if the justice thinks that the appearance of the accused will be sufficiently secured by the recognizance of *one* surety only, one only should not be taken,

particularly as the 23rd section of the 11 & 12 Vict. c. 42, speaks of *surety* or sureties. They should be housekeepers, though there would seem to be no imperative rule upon the subject; however, as such sureties only should be received as may be made answerable in the event of default, it is obvious that no person who is not a housekeeper having a settled habitation, wherein a levy may be made, can answer the purpose intended by admitting to bail.

Amount of bail.—As regards the amount of recognizance,—this will depend upon the magnitude of the offence, and the position of the parties, and will in every case be a fit subject for the exercise of a wise discretion; no rule can be laid down, care, however, should be observed that, whilst the amount is not unnecessarily heavy, it is nevertheless sufficiently large to make its forfeiture a matter of serious inconvenience to the parties. The recognizance of the accused himself is usually double that of each of his sureties.

If the justices consent to take bail and the prisoner is prepared with them, they may at once enter into their recognizances. Before, however, their doing so, the justices should satisfy themselves that they are persons of substance and likely to comply with the terms of their recognizance.

The mode of taking the bail is by stating verbally to the prisoner and his sureties the substance of his and their recognizance, as thus:—

You, A. B., of , and you, L. M., of , and you, N. O., of , severally acknowledge yourselves to owe to our Sovereign Lady the Queen, the several sums following, that is to say, you the said A. B., the sum of , &c. &c.

Then the condition of the recognizance should be stated.

The following are the forms provided by the statute:—

RECOGNIZANCE OF BAIL.

— } Be it remembered, that on the day of , in the
to wit. } year of our Lord , A. B., of , (labourer),
L. M., of , (grocer), and N. O., of , (butcher), personally
came before (us), the undersigned, two of Her Majesty's justices of the
peace for the said (county), and severally acknowledged themselves to
owe to our Lady the Queen the several sums following: (that is to say)
the said A. B. the sum of , and the said L. M. and N. O. the
sum of , each of good and lawful money of Great Britain, to be
made and levied of their several goods and chattels, lands and tenements
respectively, to the use of our said Lady the Queen, her heirs and
successors, if the said A. B. fail in the condition indorsed.

Taken and acknowledged the day and year first above men-
tioned, at , before us.

J. S.

J. N.

CONDITION.

The condition of the within-written recognizance is such that, whereas the said A. B. was this day charged before (us) the justices within mentioned, for that (*etc.*, as in the warrant); if therefore the said A. B. will appear at the next Court of Oyer and Terminer and General Gaol Delivery (or Court of General Quarter Session of the Peace) to be holden in and for the county of , and there surrender himself into the custody of the keeper of the (*common gaol*) there, and plead to such indictment as may be found against him by the grand jury, for or in respect of the charges aforesaid, and take his trial upon the same, and not depart the said court without leave; then the said recognizance to be void, or else to stand in full force and virtue.

NOTICE OF THE SAID RECOGNIZANCE TO BE GIVEN TO THE ACCUSED AND HIS BAIL.

Take notice that you A. B. of , are bound in the sum of , and your (sureties L. M. and N. O.) in the sum of each, that you A. B. appear (*etc.*, as in the condition of the recognizance), and not depart the said court without leave; and unless you the said A. B. personally appear and plead and take your trial accordingly, the recognizance

entered into by you and your sureties shall be forthwith levied on you and them.

Dated this day of , 185 .

J. S.

Upon the prisoner and his bail entering into the foregoing recognizance, the above notice should be given to each.

Certificate of willingness to accept Bail.—If the justices in a case in which they have a discretion as to admitting to bail, decide upon taking it, but the prisoner is not then prepared, he will be committed, and may afterwards be admitted to bail. In such a case they will certify upon the back of the warrant of commitment their consent, which is to be in the following form:—

CERTIFICATE OF CONSENT TO BAIL BY THE COMMITTING JUSTICE
INDORSED ON THE COMMITMENT.

I hereby certify that I consent to the within-named A. B. being bailed by recognizance, himself in , and (*two*) sureties in each.

J. S.

Upon this certificate being indorsed, the prisoner may, at any time before the first day of the sitting or session at which he is to be tried, or before the day to which such sitting or session may be adjourned, be admitted to bail by any justices attending or being at the gaol where he is confined.

But without such certificate it is competent to the actual committing justice (but no other) to admit the prisoner to bail.

When the Justice is bound to certify.—When the offence is one in which the prisoner has a *right* to be admitted to bail, and he is committed to prison, the committing magistrate is bound to certify his consent to bail as above.

When a Prisoner has a right to be bailed, though there is no Certificate.—It would appear, however, that in a case where the prisoner has a right to bail, the want of the certificate of the committing magistrate cannot affect him, inasmuch as by the 23rd section in such case he may apply to any one of the visiting justices of the prison, or to any other justice of the peace for the same county, riding, division, liberty, city, borough, or place, who will be bound to admit him to bail.

Admitting to Bail when Defendant in Gaol and his Sureties at a distance.—In cases where the prisoner has been committed, and consent is given to take bail, it will often occur that it is inconvenient for the sureties to attend at the gaol. In that event, the statute has provided that the committing justice is to make a duplicate of his certificate, and upon the production of such certificate, to any justice, he is to take the recognizance of the sureties in conformity with such certificate, and then, upon the recognizances so taken being transmitted to the gaoler and being produced, together with the certificate on the warrant of commitment to any justice at the gaol, he will take the prisoner's recognizance and order him to be discharged.

Mode of proceeding.—In a case such as that last-mentioned, the practical mode of proceeding will be that of applying to the gaoler for a copy of the warrant of commitment, together with the indorsement of the consent to bail, which should then be taken to the committing justice, who, upon seeing the same, will make a separate copy of his certificate of consent to bail. If the justice, however, has kept a copy (as probably he will have done) of his warrant of commitment and certificate, this preliminary application to the gaoler may be unnecessary, and the application may at once be made to the justice for such copy of his certificate, whereby both delay and expense will

be saved. In such a case the following will be the form of certificate :—

**CERTIFICATE OF CONSENT TO BAIL BY COMMITTING JUSTICE ON
A SEPARATE PAPER.**

Whereas A. B. was on the committed by me to the (*House of Correction*) at charged with (*g.c., naming the offence shortly*).

I hereby certify that I consent to the said A. B. being bailed by recognizance, himself in , and (*two*) sureties in each.

Dated the day of , 185 .

J. S.

Notice of Bail, when required.—When bail is not at once given upon the commitment, a condition is often imposed by the justices that the prisoner, before being admitted to bail, shall give a notice in writing of his intention, with the names and residences and degree of his proposed sureties. The length of this notice will vary according to circumstances, rarely, however, exceeding twenty-four hours. When this condition is imposed, it should be inserted in the justice's certificate, and it may be stated thus :—“*But I require the said A. B. to give twenty-four hours' written notice to the prosecutor C. D., of his intention to tender such bail, with the time and place of so tendering, and the names, abodes, and quality of his proposed sureties.*” In such a case, upon receiving notice, the prosecutor should endeavour to ascertain the sufficiency of the proposed bail, and if he has any valid ground for objecting to them, he should attend at the time and place specified, and then substantiate his objections.

Warrant of deliverance upon bail being put in.—Upon bail being thus taken, a warrant of deliverance will be issued to the gaoler, as provided for by section 24 of the 11 & 12 Vict. c. 42, which enacts—

That in all cases where a justice or justices of the peace shall admit to bail any person who shall then be in any prison charged with the offence

for which he shall be so admitted to bail, such justice or justices shall send to, or cause to be lodged with the keeper of such prison, a warrant of deliverance under his or their hand and seal, or hands and seals, requiring the said keeper to discharge the person so admitted to bail, if he be detained for no other offence; and upon such warrant of deliverance being delivered to, or lodged with such keeper, he shall forthwith obey the same.

The following is the form provided by the act :—

WARRANT OF DELIVERANCE ON BAIL BEING GIVEN FOR A
PRISONER ALREADY COMMITTED.

— } To the keeper of the (*House of Correction*) at in the
to wit. } said (*county*) of .

Whereas A. B., late of , (*labourer*) hath before (*us two*) of Her Majesty's justices of the peace, in and for the said (*county*) entered into his own recognizance, and found sufficient sureties for his appearance at the next Court of Oyer and Terminer and General Gaol Delivery (*or*, Court of General Quarter Sessions of the Peace) to be holden in and for the (*county*) of , to answer our sovereign Lady the Queen for that (*&c.*, as in the commitment) for which he was taken and committed to your said (*House of Correction*); these are therefore to command you in Her Majesty's name, that if the said A. B. do remain in your custody in the said (*House of Correction*) for the said cause and for no other, you shall forthwith let him go at large.

Given under my hand and seal this day of , in the
year of our Lord , at , in the (*county*) aforesaid.

J. S. [L. S.]

J. N. [L. S.]

Transmission of recognizance of Bail.]—It has been seen that section 23 (*ante*, p. 176) directs that when a prisoner is admitted to bail by a justice *other* than the committing justice, such justice is forthwith to transmit the recognizances of bail to the committing justice, to be by him transmitted with the examinations to the proper officer.

Application to the Court of Queen's Bench to be admitted to Bail.]—Should the committing justices

decline to take bail, the prisoner may apply to the Court of Queen's Bench, or to a judge of that court at chambers, for permission to be admitted to bail. This application is made upon a verified copy of the depositions, and upon such affidavits as the prisoner may be enabled to make or obtain, setting forth such facts as will show his innocence, and the probability of his appearing to take his trial. Upon these materials, the motion in form is for a writ of *certiorari* to bring up the depositions, and for a rule calling upon the justices and the prosecutor to show cause why the prisoner should not be admitted to bail. If the prisoner is in confinement in the country the rule is usually (to avoid the expense of the prisoner's being brought up by *habeas corpus*), why he should not be admitted to bail in the country. When the charge is one of manslaughter, the rule usually calls upon the coroner, prosecutor, and next-of-kin to show cause. Upon the return of the *certiorari* with the depositions, and upon the return also of the rule or summons, cause probably will be shown, when the court or judge will grant or refuse the application according to circumstances. Should the application be granted, the court or judge will decide upon the number of sureties and the amount for each. Upon this a rule will be drawn up and transmitted to the country (if bail is there to be taken), and the prisoner will be admitted to bail accordingly. As, however, these proceedings are more within the scope of a treatise upon the Crown Practice of the Court of Queen's Bench than the present work, it is unnecessary further to enter upon them.

Surrender of Defendant by his Bail.—At any time during which the responsibility of the bail continues, they may surrender the defendant to custody and so release themselves of their liability. To do this, they should either themselves apprehend and take him before a justice, who, thereupon, will commit him or require him to give fresh bail; or the bail may make a complaint before a justice of their belief, that the

defendant will abscond, and thereupon a warrant will be granted for his apprehension ; and this would seem to be the better course of the two, as it precludes the chance of a breach of the peace.

Applications to Justices for restoration of Prisoner's property.—As it will probably have occurred on the prisoner's apprehension that he has been searched, and whatever valuables he had about him taken possession of by the constable, an application will, under certain circumstances, be proper to be made, on the part of the accused, to the justices for a restoration. In practice much difficulty is experienced in this matter. When a party is apprehended upon a criminal charge it is undoubtedly right that he should be searched to ascertain if he has any weapons upon him which may be used for vicious purposes, or to ascertain if he have anything about him in any way connected with the charge, or that may throw a light upon it, and in the event of any such being found, to take it from him and keep it in safety until the charge is in some way disposed of, or some order is made respecting it. To deprive a prisoner of his property for any other purpose, is both unjustifiable and cruel, as he is thereby deprived of his best, if not his only, means of defence.

Upon this subject Mr. Justice Patteson, in *Rex v. O'Donnell* (7 Car. & Pay. 138), makes these very proper remarks :—

The prisoner complains that his money was taken from him, and that he was thereby deprived of the means of making his defence. Generally speaking it is not right that a man's money should be taken away from him unless it is connected in some way with the property stolen. If it is connected with the robbery it is quite proper that it should be taken; but unless it is, it is not a fair thing to take away his money which he might use for his defence. I believe constables are too much in the habit of taking away everything they find upon a prisoner, which is certainly not right; and this is a rule which ought to be observed by all policemen and other peace officers.

To search a party on his apprehension, and without scruple to take from him every particle of property he possesses, frequently without regard to the nature of the charge upon which he is apprehended, is too frequently the course adopted by constables and other officers. There are really few cases in which the depriving of a prisoner of his money can be justified. Upon charges of personal violence, unconnected with theft, it is altogether inexcusable, and is no more to be justified than taking the studs from his shirt or the handkerchief from his pocket. True it is, that upon a conviction of felony a prisoner forfeits his personal property to the Crown, but it is *only* upon conviction, and no one has a right to deprive a prisoner of his goods by way of anticipation of a conviction.

If therefore a prisoner has been deprived of his property on his apprehension, it will be well for him or his professional adviser to apply to the magistrates to order its restoration. In such case the justices will consider whether or not there is any connexion between the subject-matter of the charge and the property sought to be returned, or whether or not the property is the produce of crimes which may form the subject of inquiry. If it appear not to be, they will act wisely in ordering it to be restored, provided it be in itself of a harmless nature. It will probably, however, be urged against such a course, that if it be right that the prisoner should have back his property, the chairman or judge at his trial can then make an order for the purpose; but when it is remembered that the re-delivery at the time of trial may be too late to enable the accused to avail himself of it for the purposes of his defence, the justice of at once making an order for the restoration is strikingly apparent. Should the justices hesitate to make such an order upon any doubt as to their powers, it may be answered that the same powers upon the subject possessed by the judge at the trial which are constantly exercised by them are possessed in equal fullness by the committing magistrates.

Copy of the Depositions for Prisoner.—When the examinations are completed, the defendant is entitled, upon application, to a copy of them. This is provided by section 27 of the 11 & 12 Vict. c. 42, which enacts—

That at any time after all the examinations aforesaid shall have been completed, and before the first day of the assizes or sessions, or other first sitting of the court at which any person so committed to prison, or admitted to bail as aforesaid is to be tried, such person may require and shall be entitled to have of and from the officer or person having the custody of the same, copies of the depositions on which he shall have been committed or bailed, on payment of a reasonable sum for the same not exceeding at the rate of threehalfpence for each folio of ninety words.

Upon this section the following observations may be made: First, it does not apply to the furnishing of copies of the depositions on the application of the prosecutor; but whilst it would be highly unbecoming to refuse him copies, they may, if furnished, be charged at a higher rate than that named in the section. This amount will generally be provided for by the table of fees. Secondly, the accused is not entitled to a copy until the whole of the examinations are completed; thus, he cannot demand a copy upon a remand for re-examination: (*Reg. v. The Lord Mayor of London*, 5 Q. B. 555; *Ex parte Fletcher*, 13 L. J. 67, M. C.) Thirdly, he is not entitled to them where he is not committed to prison or held to bail to take his trial for some offence, as, where the charge is dismissed: (*Ex parte Humphreys*, 19 L. J. 189, M. C.; 4 New Sess. Cas. 179.) Fourthly, the accused is not entitled to a copy of his voluntary statement, the section speaking only of *copies of the depositions on which, &c.*, though it is quite competent to the justices to give it to him with the copy of the depositions, and in many divisions it is invariably given, and indeed the most fair and liberal course is *always* to furnish it with the examinations, the spirit of the act being, that the accused

should have a copy of all that is to be adduced against him, and it being of the utmost importance to him that he should be informed of what it is that is intended to be proved against him as said to come from his own mouth.

Certificate of Expenses.—At the conclusion of the hearing, and upon the committal of the prisoner, the magistrates should give the prosecutor a certificate for his expenses, the amount of which he will obtain of the county treasurer after the trial of the case. The statutes at present chiefly governing this subject are the 7 Geo. 4, c. 64, and the 14 & 15 Vict. c. 55. By the 22nd section of the former statute it is enacted that all courts before which any felony is tried, may make an order for the payment of the costs and expenses incurred by the prosecutor in preferring the indictment, and also such sums of money as shall be reasonable and sufficient to reimburse the prosecutor and witnesses the expenses they shall severally have incurred in attending before the examining magistrate and the grand jury, and in otherwise carrying on such prosecution, and also to compensate them for their trouble and loss of time therein; and the amount of expenses of attending before the examining magistrate, and the compensation for trouble and loss of time therein shall be ascertained by the certificate of such magistrate granted before the trial or attendance in court, if such magistrate shall think fit to grant the same. The 23rd section of the same statute enacts that the same costs (except those of attending before the examining magistrates) shall be allowed in the following *misdemeanors*:—Assault with intent to commit felony; attempt to commit felony; riot; receiving stolen property; assault upon a peace officer in the execution of his duty; assault upon any person aiding such peace officer; neglect or breach of duty as a peace officer; assault in pursuance of any conspiracy to raise wages; obtaining property by false pretences; wilful and indecent exposure of the person; perjury and subornation of perjury. However, by the first section of

the 14 & 15 Vict. c. 55, the exception in the first mentioned act is repealed, whereby the misdemeanors therein mentioned are placed upon an equal footing with felonies as regards the costs and expenses of prosecutions; and by the 2nd section of the 14 & 15 Vict. c. 55, the 23rd section of the 7 Geo. 4, c. 64, as amended by the 1st section of the 14 & 15 Vict. c. 55, is extended to the following misdemeanors: namely, unlawfully and carnally knowing and abusing any girl above ten and under twelve years 'of age; unlawfully taking or causing to be taken any unmarried girl under sixteen, out of the possession and against the will of her father, &c.; conspiring to charge any person with any felony, or to indict any person of any felony, conspiring to commit any felony; and by the 3rd section of this statute it is provided that where justices acting under the 9 Geo. 4, c. 31, bind parties by recognizance to prosecute or give evidence on bills of indictment for common assaults, costs, as in cases of felony, may be allowed at the discretion of the court.

By the 14 & 15 Vict. c. 19, s. 14, it is also enacted that in all prosecutions for any offence against that act it shall be lawful for the court to allow the expenses of the prosecution in all respects as in cases of felony; and by the 1 Vict. c. 44, a similar provision is enacted with reference to the misdemeanor of concealing the birth of a child.

These scales of costs have heretofore been framed by the justices at their quarter sessions, under the powers conferred upon them by the 7 Geo. 4, c. 64. But by section 4 of the 14 & 15 Vict. c. 55, these powers have been repealed, and by the 5th section the entire authority upon the subject has been transferred to one of Her Majesty's secretaries of state.

The following may be the form of certificate of the justices:—

— } I, the examining magistrate in the prosecution
to wit. } against , committed for trial at the next to
be holden in and for the said county, for felony, do hereby certify

that , the prosecutor, hath incurred the undermentioned expenses in attending before me in the said prosecution, and that the said prosecutor and the undermentioned witnesses in the said prosecution are also severally entitled to compensation for trouble and loss of time therein to the amount set below opposite their respective names :

					£	s.	d.
<i>Prosecutor's Expenses.</i> —Information by person ...							
Warrant to apprehend	...	...	...	...	...	...	...
Warrant to search	...	...	...	...	...	...	...
Commitments for further examination	...	...	...	...	...	...	...
Summonses for witnesses	...	...	...	...	...	...	...
Examination of witnesses	...	...	...	...	...	...	...
Examination of prisoner	...	...	...	...	...	...	...
Commitment for trial	...	...	...	...	...	...	...
Persons bound in recognizance	...	...	...	...	...	...	...
Notice of recognizance to persons	...	...	...	...	...	...	...
Certificate of expenses	...	...	...	...	...	...	...
<i>Compensation for trouble, &c.</i> —Prosecutor ...							
Witnesses, viz.							
TOTAL					£		
Amounting in the whole to the sum of					Pounds	Shillings	
and Pence.							
Given under my hand at , the					day of	185	.

CHAPTER XII.

MODE OF PROCEEDING AGAINST A DEFENDANT UPON
AN INDICTMENT FOUND WHEN THERE HAS BEEN
NO PREVIOUS COMMITTAL BY A JUSTICE.

Course to be pursued.—The foregoing proceedings have all had reference to the initiation of a charge of an indictable offence before justices at petty sessions. This, however, is not the only course open to a prosecutor. He can, as before has been shown (*ante*, p. 115), altogether pass over this preliminary investigation, and commence his prosecution by at once preferring his indictment at the quarter sessions. Should the prosecutor therefore think proper to prefer his indictment in the first instance without having the case preliminarily investigated by a justice, a different order of proceedings will be adopted. For such a state of things the 11 & 12 Vict. c. 42, has made ample provision, the 3rd section clearly directing the course to be followed. By that section it is enacted—

That where any indictment shall be found by the grand jury in any Court of Oyer and Terminer, or General Gaol Delivery, or in any Court of General or Quarter Sessions of the Peace, against any person who shall then be at large, and whether such person shall be bound by any recognizance to appear to answer to the same or not, the person who shall act as clerk of the indictments at such Court of Oyer and Terminer or Gaol Delivery, or as clerk of the peace at such sessions at which the said indictment shall be found, shall at any time afterwards, after the end of the Sessions of Oyer and Terminer, or Gaol Delivery, or Sessions of the Peace at which such indictment shall have been found, upon application of the prosecutor, or of any person on his behalf, and on payment of a fee of one shilling, if such person shall not have already appeared and pleaded

to such indictment, grant unto such prosecutor or person a certificate of such indictment having been found; and upon production of such certificate to any justice or justices of the peace for any county, riding, division, liberty, city, borough, or place in which the offence shall in such indictment be alleged to have been committed, or in which the person indicted in and by such indictment shall reside, or be, or be supposed or suspected to reside or be, it shall be lawful for such justice or justices, and he or they are hereby required to issue his or their warrant to apprehend such person so indicted, and to cause him to be brought before such justice or justices, or any other justice or justices for the same county, riding, division, liberty, city, borough, or place, to be dealt with according to law, and afterwards if such person be thereupon apprehended and brought before any such justice or justices, such justice or justices, upon its being proved upon oath or affirmation before him or them that the person so apprehended is the same person who is charged and named in such indictment, shall without further inquiry or examination commit him for trial, or admit him to bail in manner hereinafter mentioned; or if such person so indicted shall be confined in any gaol or prison for any other offence than that charged in the said indictment at the time of such application and production of the said certificate to such justice or justices as aforesaid, it shall be lawful for such justice or justices, and he and they are hereby required, upon it being proved before him or them upon oath or affirmation that the person so indicted and the person so confined in prison are one and the same person, to issue his or their warrant directed to the gaoler or keeper of the gaol or prison in which the person so indicted shall then be confined as aforesaid, commanding him to detain such person in his custody until by Her Majesty's writ of *habeas corpus* he shall be removed therefrom for the purpose of being tried upon the said indictment, or until he shall otherwise be removed or discharged out of custody by due course of law.

Mode of proceeding upon an Indictment found, when the Defendant is at large.—If the defendant against whom a bill of indictment is found has been neither committed to prison nor held to bail by justices to answer the charge, and he is at large, the prosecutor may, during the continuance of the sessions, apply for and obtain a Bench warrant for his apprehension. If, however, no such warrant has been obtained pending

the sessions, or at any time after such sessions, the clerk of indictments at the assizes, or the clerk of the peace at sessions, upon application, will grant a certificate of the indictment having been found. The following is the form of the certificate :—

CERTIFICATE OF INDIOTMENT BEING FOUND.

I hereby certify that at (a Court of Oyer and Terminer and General Gaol Delivery, or a Court of General Quarter Sessions of the Peace) holden in and for the (county) of , at , in the said (county), on , a bill of indictment was found by the grand jury against A. B., therein described as A. B., late of , (labourer) for that he (*fec.*, stating shortly the offence), and that the said A. B. hath not appeared or pleaded to the said indictment.

Dated this day of , 185 .

J. D.

Clerk of the indictments on the circuit.
or

Clerk of the peace of and for the said (county).

Upon production of this certificate to a justice, as mentioned in the foregoing section, he will grant his warrant of apprehension, which may be as follows :—

WARRANT TO APPREHEND A PERSON INDICTED.

— } To the constable of , and to all other peace officers in
to wit. } the said (county) of .

Whereas it hath been duly certified by J. D., clerk of the indictments on the circuit (or clerk of the peace of and for the (county) of), that (*fec.*, stating the certificate). These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B., and to bring him before (*me*), or some other justice or justices of the peace in and for the said (county), to be dealt with according to law.

Given under my hand and seal this day of , in the
year of our Lord , at , in the (county) aforesaid.

J. S. [L. S.]

Committal to Prison or admitting to Bail.]—Upon the defendant being apprehended, he will be taken before the justice, whereupon it will be necessary to

prove upon oath or affirmation that he is the person charged and named in the indictment. Any one who knows this fact can depose to it. Upon this, the justice will at once commit him to trial, or, if the charge is one upon which the prisoner has a right to give bail, will admit him to bail according to the method before pointed out.

The following may be the form of the warrant of commitment:—

WARRANT OF COMMITMENT OF A PERSON INDICTED.

— } To the constable of , and to the keeper of the (*Common
to wit.* } *Gaol or House of Correction*) at , in the said
(*county*) of .

Whereas by (*my*) warrant under (*my*) hand and seal dated the day of , after reciting that it had been certified by J. D. (*&c., as in the certificate*) (*I*) commanded the constable of , and all other peace officers of the said county in Her Majesty's name forthwith to apprehend the said A. B., and to bring him before (*me*) the undersigned (*one*) of Her Majesty's justices of the peace in and for the said (*county*), or before some other justice or justices of the peace in and for the said (*county*) to be dealt with according to law. And whereas the said A. B. hath been apprehended under and by virtue of the said warrant, and being now brought before (*me*) it is hereupon duly proved to (*me*), upon oath, that the said A. B. is the same person who is named and charged in and by the said indictment: these are therefore to command you the said constable in Her Majesty's name forthwith to take and safely convey the said A. B. to the said (*House of Correction*) at , in the said (*county*), and there to deliver him to the keeper thereof together with this precept; and I hereby command you, the said keeper, to receive the said A. B. into your custody in the said (*House of Correction*), and him there safely to keep until he shall be thence delivered by due course of law.

Given under my hand and seal this day of , in the
year of our Lord , at , in the (*county*) of .

J. S. [L. S.]

Mode of proceeding if Defendant is in custody upon another charge.—If the party against whom the indictment is found be already in custody, but upon

some other charge, then according to the foregoing section, he may be continued in custody upon such indictment by an application to a justice for his warrant for the purpose. This application must be founded upon a certificate of the indictment being found, and should be supported by a deposition of the identity of the prisoner and his custody in the gaol in question. Upon this, the magistrate will issue his warrant in the following form :—

WARRANT TO DETAIN A PERSON INDICTED WHO IS ALREADY IN CUSTODY FOR ANOTHER OFFENCE.

— } To the keeper of the (*Common Gaol or House of Correction*)
to wit. } at , in the (*county*) of .

Whereas it has been duly certified by J. D., clerk of the indictments on the circuit (*or clerk of the peace of and for the county of*), that (*&c., stating the certificate*), and whereas (*I am*) informed that the said A. B. is in your custody in the said (*common gaol*) at , aforesaid, charged with some offence or other matter; and it being now duly proved upon oath before (*me*) that the said A. B. so indicted as aforesaid, and the said A. B. in your custody as aforesaid, are one and the same person: these are therefore to command you in Her Majesty's name to detain the said A. B. in your custody in the (*common gaol*) aforesaid, until by Her Majesty's writ of *habeas corpus* he shall be removed therefrom for the purpose of being tried upon the said indictment, or until he shall otherwise be removed or discharged out of your custody by due course of law.

Given under my hand and seal this day of , in the
year of our Lord, 185 , at in the (*county*) aforesaid.
J. S. [L. S.]

CHAPTER XIII.

JUVENILE OFFENDERS.

PROCEEDINGS UNDER THE JUVENILE OFFENDERS ACTS,
10 & 11 VICT. C. 82, AND 13 VICT. C. 37.

IN many cases of simple larceny, when the offenders are under sixteen years of age, justices at petty sessions have, with the consent of the accused parties, powers to commit summarily, instead of committing for trial.

Over what Parties and Offences the Justices have Jurisdiction.—The first statute upon the subject is the 10 & 11 Vict. c. 82, the 1st section of which points out the conditions and circumstances under which this summary jurisdiction may be exercised. It enacts as follows :—

That any person who shall subsequently to the passing of this act be charged with having committed or having attempted to commit, or with having been aider, abettor, counsellor, or procurer in the commission of any offence which now is or hereafter shall or may be deemed or declared to be simple larceny or punishable as simple larceny, and whose age at the period of the commission or attempted commission of such offence shall not, in the opinion of the justices before whom he or she shall be brought or appear as hereinafter mentioned, exceed the age of fourteen years, shall upon conviction thereof upon his own confession or upon proof before any two or more justices of the peace for any county, riding, division, borough, liberty, or place, in petty sessions assembled at the usual place and in open court, be committed to the common gaol or house of correction within the jurisdiction of such justices, there to be imprisoned with or without hard labour for any term not exceeding three calendar months, or in the discretion

of such justices shall forfeit and pay such sum not exceeding three pounds as the said justices shall adjudge, or if a male, shall be once privately whipped, either instead of or in addition to such imprisonment or imprisonment with hard labour; and the said justices shall from time to time appoint some fit and proper person being a constable to inflict the said punishment of whipping when so ordered to be inflicted out of prison. Provided always that, if such justices upon the hearing of any such case shall deem the offence not to be proved or that it is not expedient to inflict any punishment, they shall dismiss the party charged on finding surety or sureties for his future good behaviour, or without such sureties, and then make out and deliver to the party charged, a certificate under the hands of such justices, stating the fact of such dismissal; and such certificate shall and may be in the form or to the effect set forth in the schedule hereto annexed in that behalf: provided also that, if such justices shall be of opinion before the person charged shall have made his or her defence that the charge is from any circumstance a fit subject for prosecution by indictment, or if the person charged shall upon being called upon to answer the charge object to the case being summarily disposed of under the provisions of this act, such justices shall, instead of summarily adjudicating thereupon, deal with the case in all respects as if this act had not been passed.

The 2nd section enacts that any two or more justices may hear and determine the case at petty sessions, and in open court.

By the subsequent amending act (13 Vict. c. 37) the limit as regards the age of the accused is extended from fourteen to sixteen years.

Rules of Law applicable to Crimes committed by Young Persons.—It may here be convenient to state the rules of law applicable to offences committed by young people. Under the age of seven years, no child can be criminally punished for any offence whatever, being by presumption of law not endowed with any sufficient discretion to be made answerable for crime. This legal immunity, however, entirely ceases at the age of fourteen, his capacity at this period being deemed sufficiently ripe to render him answerable for his

criminal acts. But, between the ages of seven and fourteen there is no fixed rule of law, the child's liability depending upon the ripeness of his intellect, and his capability of clearly discerning between right and wrong. The presumption of law, however, between these ages is still in the child's favour, which, nevertheless, may be rebutted by evidence of a *mischievous discretion*, the capacity to do evil and contract guilt being to be measured not so much by years as by the strength of the child's understanding and judgment; and upon this principle many children under fourteen years of age have been capitally punished; but in all cases where it is intended to rebut the presumption of law by evidence of a vicious discretion, that evidence should be clear and strong: (*Rex v. Owen*, 4 C. & P. 236.) In some old authorities it is laid down that an infant cannot be convicted upon his own confession, but the facts must be inquired into; and there seems to be very good sense in this, for if the infant is by presumption of law not of sufficient discretion to judge between right and wrong, what is the value of his admission of guilt? However, in modern practice this doctrine is never acted upon, and under the before-mentioned statutes it is expressly enacted, that the child may be convicted upon its own confession. These considerations, however, will still strongly weigh with the magistrates in not very readily acting upon a confession of guilt, without strictly examining into the facts of the case.

To what Offences the Statute extends.—The statute, it will be seen, applies only to cases of *simple larceny* or those *punishable as simple larceny*. Therefore, larceny as a servant, or stealing from the person, inasmuch as they are neither simple larcenies nor punishable as simple larcenies, are not within the act.

When there are several Parties charged with the same Offence.—The statute seems to contemplate the case of a charge of simple larceny against *one* individual only. But there appears no good reason why

if a simple larceny is committed jointly by several, and they are all under the prescribed age of sixteen, they may not all be dealt with summarily. Still, if any one of the parties accused objects to the case being summarily disposed of, the proper course, as it should seem, will be for the magistrates not to deal summarily with any of the prisoners (though there are some who do not object to the summary jurisdiction), but to treat the case as in all respects of the ordinary character, and hear it as with the view to a committal for trial; and this should clearly be the course when any one of the accused parties is above the prescribed age. There is certainly no decided authority for this course, but the inconvenience of having the same facts adjudicated upon by two distinct tribunals, and the prejudice which is likely to arise upon the trial before a jury, from the fact of a prior summary conviction upon the same evidence, clearly point to the propriety of not dealing summarily with the charge, unless it is to be finally disposed of. In such a case, therefore, the justices will do well to avail themselves of the proviso in the first section which enacts that, if they shall be of opinion that the charge is from any circumstance a fit subject for prosecution by indictment, to deal with it in all respects as if the act had not passed, and so hear the charge in the ordinary way.

As to the Age of the Accused.—The age of the party is by the amending act (13 Vict. c. 37) not to exceed sixteen years. *Proof*, however, that the age does not exceed this limit is not necessary in order to confer jurisdiction, it being merely requisite that the age of the person so charged at the time of the commission, &c., of the offence shall not in the opinion of the justices exceed the age of sixteen years. However, should it appear by evidence that the party is above that age, they should proceed no further under this statute, the general words above quoted being intended merely to dispense with strict proof of the accused being under sixteen, but not intended to give jurisdiction where

proof is adduced that he is above that age. The hearing is to be by two justices at least, except in the case of the metropolitan police magistrates and stipendiary magistrates, and is to be at petty sessions and in open court.

How Defendant to be brought before the Justices.—The mode of compelling the attendance of the accused party (where he is not already in custody) is by summons or warrant. The 4th section of the 10 & 11 Vict. c. 82, which directs the mode in which the process is to issue, enacts that, where any person whose age is alleged not to exceed sixteen years, shall be charged with any such offence on the oath of a credible witness before any justice of the peace, such justice may issue his summons or warrant to summon or to apprehend the person so charged to appear before any two justices, &c. From the language of this section, it would seem that whether a summons or a warrant is to issue in the first instance, the justice granting it should have a charge upon *oath*. This, however, cannot be requisite if a summons merely is to issue.

Bailing Accused, summoning Witnesses, &c.—Ample provisions are contained in sects. 5, 7, and 8, for the bailing of the accused on remand, the summoning and compelling the attendance of witnesses, and the service of the summons.

Mode of proceeding at the Hearing.—As regards the course of proceeding at the hearing, the second section of the 13 & 14 Vict. c. 37, which is the only one purporting to deal with this subject, states—

That one of the justices before whom any person shall be charged and proceeded against under this act, or the hereinbefore mentioned acts, before such person shall be asked whether he or she has any cause to show why he or she should not be convicted, shall say to the person so charged these words, "We shall have to hear what you wish to say in answer to the charge against you; but if you wish the charge to be tried by a jury, you must object now to our

deciding upon it at once," and if such person or a parent of such person shall then object, the justices shall proceed with the charge as if the said acts had not been passed.

The introduction into this clause of the words "before such person shall be asked whether he or she has any cause to show why he or she should not be convicted," favours the opinion that the proceedings are to be in conformity with those adopted upon summary convictions; and that if the defendant does not exercise his option of being tried by a jury, he may be called upon to plead to the charge as upon an information, and upon his pleading guilty may be convicted without further evidence. However, let this be as it may, it will be well for the magistrates to hear the whole of the evidence, and in doing so the same advantages should be allowed the defendant as upon a summary conviction.

As to objecting to the summary Jurisdiction]—If the defendant or one of his parents for him objects to the justices deciding upon the case at once, the subsequent proceedings will be the same as those before described upon a preliminary hearing with a view to a committal to trial. If no such objection is made, then the proceedings will be those before pointed out as applicable to a summary conviction.

The Judgment.]—The judgment of the justices is fully provided for by the 1st section of the 10 & 11 Vict. c. 82, above set out. However, by the 1st section of the 13 & 14 Vict. c. 37, the punishment of whipping is forbidden to be inflicted upon any offender whose age exceeds fourteen years.

Certificate of Justices.]—It has been seen that, by the 1st section of the 11 & 12 Vict. c. 82, upon the magistrates dismissing the charge, they are to deliver to the party charged a certificate of such dismissal; and by the 3rd section it is enacted that any person who shall have obtained such certificate, or who shall

have been convicted under the act, shall be released from all further or other proceedings for the same cause. The following is the form of certificate provided by the act:—

FORM OF CERTIFICATE OF DISMISSAL.

— } We of Her Majesty's justices of the peace for the
to wit. } county of (or I a magistrate of the police court of ,
as the case may be), do hereby certify that on the day of , in
the year of our Lord , at , in the said county of , M. N.
was brought before us the said justices (or me the said magistrate),
charged with the following offence (that is to say) (*here state briefly
the particulars of the charge*), and that we the said justices (or I the
said magistrate) thereupon dismissed the said charge.

Given under our hands (or my hand) this day of .

Form of Conviction..]—Upon the justices convicting, they will in due course cause a formal conviction to be drawn up and returned to the quarter sessions. The following is the form of conviction given by the statute :—

FORM OF CONVICTION.

— } Be it remembered that on the day of , in the
to wit. } year of our Lord one thousand eight hundred and ,
at , in the county of , (or riding, division, liberty, city,
&c., as the case may be), A. B. is convicted before us, J. P. and Q. R., two
of Her Majesty's justices of the peace of the said county (or riding, &c.),
or me, S. T., a magistrate of the police court of , (as the case may
be), for that he the said A. B. did (*specify the offence, and the time and
place when and where the same was committed, as the case may be; but
without setting forth the evidence*), and we the said J. P. and Q. R.
(or I the said S. T.) adjudge the said A. B. for his said offence to be
imprisoned in the , (or to be imprisoned in the , and
there kept to hard labour for the space of), or we (or I)
adjudge the said A. B. for his said offence to forfeit and pay ,
(*here state the penalty actually imposed*), and in default of immediate
payment of the same to be imprisoned in the , (or to be
imprisoned in the , and there kept to hard labour) for the space

[M. C.]

T

of _____, unless the said sum shall be sooner paid. Given under our hands and seals (or my hand and seal) the day and year first above mentioned.

As to ordering whipping.—It will be seen by the 1st section of the 10 & 11 Vict. c. 82, that the magistrates have the power, upon convicting the defendant, to order him to be once privately whipped, either instead of or in addition to his imprisonment, and they are from time to time to appoint some fit and proper person, being a constable, to inflict the said punishment of whipping when so ordered to be inflicted out of prison.

Ordering restitution.—The 12th section contains provisions enabling the magistrates to order restitution of the stolen property, and if it be not forthcoming, they may inquire into its value in money, and may order payment by the party convicted either at one time or by instalments.

As to payment of Penalty and Costs.—The 13th section provides for the enforcing of the payment of the pecuniary penalty, and the 14th, 15th, and 16th sections direct the payment of the costs and expenses of the prosecutor and his witnesses.

Sending Juvenile Offenders to an Industrial or Reformatory School.—It may here be mentioned that with reference to juvenile offenders, great and useful powers are conferred upon justices to send them for certain periods to an industrial school in the case of a conviction for vagrancy, and to a reformatory school in the case of a conviction in other cases; and that the statute applicable to the former is the 20 & 21 Vict. c. 48, and those applicable to the latter are the 17 & 18 Vict. c. 86; 19 & 20 Vict. c. 109, and the 20 & 21 Vict. c. 55.

CHAPTER XIV.

OF PROCEEDINGS AT PETTY SESSIONS, UNDER THE
LARCENY SUMMARY JURISDICTION ACT (18 & 19 Vict.
c. 126.)

THE 18 & 19 Vict. c. 126, entitled "*An Act for diminishing expense and delay in the administration of criminal justice in certain cases*," having introduced in some particulars a new practice with reference to certain criminal charges, it becomes necessary that the provisions of this statute should be carefully considered.

The object of the act, as its title imports, is twofold—to diminish expense,—and avoid delay, and this it endeavours to accomplish by conferring on justices sitting at petty sessions a power in certain cases, with the consent of the accused, to decide summarily upon the charge, and in such and other cases when the accused pleads guilty, to sentence him at once without committing him to the sessions or assizes.

The better to comprehend the proper practice under this statute, it will be advisable to consider its provisions *seriatim* as they follow in the act itself.

The first section enacts as follows :—

Where any person is charged before any justices of the peace assembled at such petty sessions as hereinafter provided with having committed simple larceny, and the value of the whole of the property alleged to have been stolen does not, in the judgment of such justices, exceed five shillings, or with having attempted to commit larceny from the person, or simple larceny, it shall be lawful for such justices to hear and determine the charge in a summary way, and if the person charged shall confess the same, or if such justices, after hearing the whole case for the prosecution and for the defence, shall find the charge to be proved, then it shall be lawful for such justices to convict the person

charged, and commit him to the common gaol or house of correction, there to be imprisoned, with or without hard labour, for any period not exceeding three calendar months, and if they find the offence not proved they shall dismiss the charge, and make out and deliver to the person charged a certificate under their hands stating the fact of such dismissal; and every such conviction and certificate respectively may be in the forms (A.) and (B.) in the schedule to this act, or to the like effect: provided always, that if the person charged do not consent to have the case heard and determined by such justices, or if it appear to such justices that the offence is one which, owing to a previous conviction of the person charged, is punishable by law with transportation or penal servitude, or if such justices be of opinion that the charge is, from any other circumstances, fit to be made the subject of prosecution by indictment, rather than to be disposed of summarily, such justices shall, instead of summarily adjudicating thereon, deal with the case in all respects as if this act had not been passed: provided also, that if upon the hearing of the charge such justices shall be of opinion that there are circumstances in the case which render it inexpedient to inflict any punishment, they shall have power to dismiss the person charged, without proceeding to a conviction.

Justices to act under the statute only at petty sessions.]—Upon this section, it will be observable that to give justices a right to act under this statute they must be assembled at petty sessions, which sessions, as will hereinafter be seen by section 10, are to be the petty sessions holden for a petty sessional division, and of the holding of which a printed notice of the days and hours is to be posted or affixed by the clerk of the justices upon the outside of some conspicuous part of the building or place where holden.

Times of holding petty sessions under the act to be fixed.]—The statute contains no provisions as to the limits of time within which such petty sessions are to be holden, and the justices therefore will fix them as heretofore, having regard to the convenient administration of justice.

Days of holding such petty sessions to be published.]—As the statute requires that the notice of the holding of such petty sessions is to be written or printed, and

to be publicly posted by the clerk to the justices of petty sessions, care must be taken by such clerk to have the days appointed and published in due time.

Over what offences the justices have jurisdiction.—Under this section, the jurisdiction of the justices extends to—

1. Simple larceny, where the value of the whole of the property alleged to have been stolen does not, in their judgment, exceed five shillings.

2. Attempts to commit larceny from the person.

3. Attempts to commit simple larceny.

Powers to hear and convict.—The powers of the justices to act under this section are subject to the assent of the accused to their so acting, as provided for by the 2nd section, except that if he plead *guilty* to the charge, his assent is immaterial. If, therefore, such assent is given, the justices may hear the charge in a summary way; and if, after hearing the whole case for the prosecution and defence (or if he plead guilty), they shall find the charge to be proved, they may commit the offender to the common gaol or house of correction to be imprisoned with or without hard labour for a period not exceeding three calendar months; in which case they are to draw up a conviction in the following form:—

CONVICTION.

— } Be it remembered, that on the day of , in the year
to wit. } of our Lord , at , in the said (county), A. B.
being charged before us the undersigned of Her Majesty's justices
of the peace for the said (county), and consenting to our deciding upon
the charge summarily, is convicted before us, for that (he the said A. B.,
&c., stating the offence, and the time and place when and where
committed); and we adjudge the said A. B., for his said offence, to be
imprisoned in the (House of Correction) at , in the said (county),
(and there kept to hard labour) for the space of .

Given under our hands and seals the day and year first above
mentioned, at in the (county) aforesaid

J. S. [L. S.]
H. M. [L. S.]

Powers to hear and dismiss the charge.—If, however, the justices, upon the hearing of the charge, find the offence not proved, they are to dismiss it, and make out and deliver to the defendant the following certificate of dismissal :—

CERTIFICATE OF DIMISSAL.

— } We, of Her Majesty's justices of the peace for the (county)
to wit. } of , certify, that on the day of , in the year
of our Lord , at , in the said (county), A. B. being charged
before us, and consenting to our deciding upon the charge summarily,
for that (he the said A. B., *stating the offence charged, and the time
and place when and where alleged to be committed*), we did, having
summarily adjudicated thereon, dismiss the said charge.

Given under our hands and seals this day of , at ,
in the (county) aforesaid.

J. S. [L. S.]

H. M. [L. S.]

Of dismissing the charge when it is inexpedient to inflict any punishment.—By the concluding proviso of the same section the justices are empowered, when upon the hearing they are of opinion that there are circumstances in the case which render it inexpedient to inflict any punishment, to dismiss the person charged without proceeding to a conviction.

This is unquestionably a most wholesome power to confer on magistrates, and is obviously intended as a counteracting check upon the rigid severity of the common law rules applicable to the offence of larceny, which visit with the same disgrace the boy who picks up an apple from the ground of his neighbour's orchard and the man who commits a premeditated theft of the most valuable property.

The cases in which this useful provision should be adopted will readily suggest themselves, the justices being invested with an unfettered and extensive discretion. It is, however, greatly to be regretted, that the dismissal by the justices under this proviso is not made equally conclusive with a dismissal on their deciding that the offence is not proved. In the present

case they are not required to give any certificate of dismissal, and there is nothing, therefore, as it should seem, to prevent a prosecutor from again preferring the same charge or going before a grand jury with his bill of indictment.

When justices not to act under the statute.—Notwithstanding, however, that the case is within their jurisdiction to decide summarily, yet if there has been a previous conviction so as to render the accused liable to transportation or penal servitude, or if there are any other circumstances which in the judgment of the justices render it fit to be the subject of an indictment rather than a summary conviction, they are then to deal with the case in the ordinary way.

The first section having thus pointed out the matters over which the justices may exercise a summary jurisdiction, the second section proceeds to direct the manner of proceeding on their part in order to originate such jurisdiction. The second section is as follows :—

Where the justices before whom any person is charged as aforesaid propose to dispose of the case summarily under the foregoing provisions, one of such justices, after the examinations of all the witnesses for the prosecution have been completed, and before calling upon the person charged for any statement which he may wish to make, shall state to such person the substance of the charge against him, and shall then say to him these words, or words to the like effect: "Do you consent that the charge against you shall be tried by us, or do you desire that it shall be sent for trial by a jury at the sessions or assizes" (as the case may be); and if the person charged shall consent to the charge being summarily tried and determined as aforesaid, then the justices shall reduce the charge into writing, and read the same to such person, and shall then ask him whether he is guilty or not of such charge; and if such person shall say that he is guilty, the justices shall then proceed to pass such sentence upon him as may by law be passed, subject to the provisions of this act in respect to such offence; but if the person charged shall say that he is not guilty, the justices shall then inquire of such person whether he has any defence to make to such charge, and if he shall state that he has a defence, the justices shall hear such defence, and then proceed to dispose of the case summarily.

Course of proceeding.]—It will be observed that the proper period of the proceedings at which the justices are to form their opinion as to whether or not they think it desirable to dispose of the case summarily is, “after the examinations of all the witnesses for the prosecution have been completed.” Until this stage is arrived at, they have no functions to proceed under this act, but must in all respects conduct the investigation as though they were proceeding in the ordinary way. This provision is peremptory, and must be strictly observed whatever inconveniences it may lead to, and notwithstanding adjournment after adjournment may be requisite to complete the evidence.

When the examinations of all the witnesses are completed, one of the justices is to state to the accused the substance of the charge against him, and he is to say to him these words, or words to the like effect: “*Do you consent that the charge against you shall be tried by us or do you desire that it shall be sent for trial by a jury at the sessions or assizes?*” (as the case may be.)

If the party charged shall consent to the charge being summarily tried and determined as above mentioned, then the justices are to reduce the charge into writing and to read the same to him, and then to ask him whether he is guilty or not of such charge.

It may be, that upon this question being put to the accused he refuses to give any answer, or none which amounts either to a consent or a refusal. In such case, the justices should consider his conduct as a refusal to consent, and proceed as in ordinary cases.

If the accused party in answer to this question says that which is equivalent to a refusal to consent, the case will proceed as under the old practice.

Proceedings upon the accused pleading “guilty.”]—If after having consented to the charge being summarily disposed of, the party accused, upon being required to plead, pleads “*guilty*,” the justices are then to proceed to pass such sentence upon him as

may by law be passed, subject to the provisions of this act, which by section the 1st is not to exceed three calendar months with or without hard labour; or as before has been seen they may, under peculiar circumstances, dismiss the defendant without proceeding to a conviction.

Proceedings upon the accused pleading "not guilty."]—If, however, the defendant pleads "not guilty," the justices are then to inquire of him whether he has any defence to make to such charge, and if he shall state that he *has* a defence, they are to hear such defence, and then proceed to dispose of the case summarily.

As the plea of "not guilty," is the only one which the statute seems to recognize where the defendant does not admit his liability to be punished, it is open to him under such plea to show a former conviction or acquittal for the same offence.

Upon the defendant pleading *not guilty*, the case will proceed much as an ordinary information with a view to a summary conviction. Thus, the defendant or his counsel or attorney will have a right to address the Bench, and to call and examine all such witnesses as he may think requisite for the defence. And here it may be remarked that, as this proceeding is a substitution for trial by jury, so no advantage which a defendant would fairly have upon such a trial should be refused him now; and it would be right, as upon such a trial he would be permitted to call witnesses to character, to receive the testimony of such witnesses upon the summary hearing. Having concluded his case in defence, the justices will deliberate as to their judgment, and although in such a case they should to a certain extent consider themselves in the position of a jury, and give the accused the benefit of any reasonable doubt of his guilt, unanimity amongst them is not required, the decision of a majority being alone sufficient.

The formal conviction.]—The formal conviction of the defendant is directed to be drawn up in the form before given at page 209.

If the defendant is committed upon a plea of guilty, the form of the conviction is to be as follows:—

CONVICTION UPON A PLEA OF GUILTY.

— } Be it remembered, that on the day of , in the year
to wit. } of our Lord , at in the said (county), A. B.,
being charged before us, the undersigned, of Her Majesty's justices
of the peace for the said (county), for that (he the said A. B., &c.,
stating the offence, and the time and place when and where committed), and pleading guilty to such charge, he is thereupon convicted
before us of the said offence; and we adjudge the said A. B., for his
said offence, to be imprisoned in the (*House of Correction*) at in
the said (county), (*and there kept to hard labour*) for the space
of .

Given under our hands and seals, the day and year first above
mentioned, at , in the (county) aforesaid.

J. S. [L. S.]

H. M. [L. S.]

Proceedings upon a plea of "guilty" in other cases.]

—The two sections which have hitherto been considered, apply exclusively to the three classes of offences enumerated. The third section, however, confers powers of summarily adjudicating in certain cases of a far wider extension. That section is as follows:—

Where any person is charged before any justices at such petty sessions as aforesaid with simple larceny (the property alleged to have been stolen exceeding in value five shillings), or stealing from the person, or larceny as a clerk or servant, and the evidence, when the case on the part of the prosecution has been completed, is in the opinion of such justices sufficient to put the person charged on his trial for the offence with which he is charged, such justices, if the case appear to them to be one which may properly be disposed of in a summary way, and may be adequately punished by virtue of the powers of this act, shall reduce the charge into writing, and shall read it to the said person, and shall then ask him whether he is guilty or not of the charge; and if such person shall say that he is guilty, such justices shall thereupon cause a plea of guilty to be entered upon the proceedings, and shall convict him of such offence, and commit him to the common gaol or

house of correction, there to be imprisoned, with or without hard labour, for any term not exceeding six calendar months; and every such conviction may be in the form (C.) in the schedule to this act, or to the like effect: provided always, that the said justices, before they ask such person whether he is guilty or not, shall explain to him that he is not obliged to plead or answer before them at all, and that if he do not plead or answer before them he will be committed for trial in the usual course.

The jurisdiction of justices to act under this section is not limited as far as *value* is concerned, it is, nevertheless, restricted to cases of—

First. Simple larceny.

Second. Stealing from the person.

Third. Larceny as a clerk or servant.

The observations before made as to the necessity of the justices acting at petty sessions equally here apply.

The practice under the third section.—The *practice* upon the subject as prescribed by this section is this: when the case on the part of the prosecution is completed, and it is sufficient to put the accused party upon his trial, the justices, if the case appears to them to be one which may properly be disposed of in a summary way, and may be adequately punished by virtue of the powers of the act, are to reduce the charge into writing, and are to read it to the defendant; and they are then to ask him whether he is guilty or not of the charge? and if he shall say that he is guilty, they are thereupon to cause a plea of guilty to be entered upon the proceedings, and are to convict him of the offence, and commit him to the common gaol or House of Correction, with or without hard labour, for any term not exceeding six calendar months.

It will be observed that under this section the *consent* of the accused is immaterial, it is sufficient that the case appears to the justices to be one which may be properly disposed of, and adequately punished under this act.

Before, however, coming to any such conclusion,

the entire case on the part of the prosecution must be completed.

If the defendant pleads *guilty*, the justices will proceed as above mentioned to pass sentence ; but it must be observed that under this section they have no powers, as they have under the first, to dismiss the party charged, without proceeding to a conviction.

Before, however, the justices ask the defendant whether he is guilty or not, they are required by the section to explain to him that he is not obliged to plead or answer before them at all, and that if he do not plead or answer before them, he will be committed for trial in the usual course.

If the framer of this portion of the section had furnished a form of statement for the justice to address to the accused, he would have removed some little difficulty which any justice who is called upon to act in the matter must necessarily feel. The caution, it will be observed, is to be given before the defendant is asked if he is guilty or not, and the difficulty is to know how properly to explain to him that he is not obliged to do a thing before he is told what is that thing. Without, however, pretending that the following form is in the most perfect shape, the author ventures to think that it may be properly used upon the occasion.

THE JUSTICE TO THE DEFENDANT..

A. B., you stand charged with having, on the day of , feloniously stolen (*here state the property*), the property of C. D. (*or, with having, on the day of , feloniously stolen from the person of C. D., or being a clerk or servant of C. D., with having, whilst such clerk or servant, feloniously stolen from the said C. D., the property charged*), and the case on the part of the prosecution being now completed, we, the justices are about to ask you whether you are guilty or not of the said charge ; but before we do so, we have to tell you that you are not obliged to plead or answer to the charge at all, and that if you do not plead or answer before us you will be committed for trial in the usual way. We now ask you, are you guilty or not guilty of the charge ?

Course of proceeding, if the defendant pleads "not guilty" or refuses to plead.—If, upon this, the defendant either pleads not guilty, or does not plead, it will be the duty of the justices to proceed no further under this act, but to continue their proceedings as under the ordinary practice prescribed by the 11 & 12 Vict. c. 42, s. 18. It will be carefully borne in mind that the ordinary course of proceedings becomes diverted only in the event of the defendant pleading guilty to the charge. If he does not plead guilty, the usual proceedings, as provided by the 11 & 12 Vict. c. 42, are to be continued, and the next step will be that directed by the 18th section of the above-mentioned act, and so on without reference to any of the provisions of the 18 & 19 Vict. c. 126.

To be allowed to make full answer by Counsel or Attorney.—The 4th section enacts, that—

In every case of summary proceedings under this act, the person accused shall be allowed to make his full answer and defence, and to have all witnesses examined and cross-examined by counsel or attorney.

Justices may remand a party to be dealt with under this act.—The 5th section enacts—

Where any person is charged before any justice or justices with any offence mentioned in this act, and in the opinion of such justice or justices the case may be proper to be disposed of by justices in petty sessions under this act, the justice or justices before whom such person is so charged may, if he or they see fit, remand such person for further examination to the next petty sessions, in like manner in all respects as a justice or justices are authorized to remand a party accused under the act passed in the session holden in the eleventh and twelfth years of Her Majesty, chapter forty-two, section twenty-one, or under the Petty Sessions Act (*Ireland*), 1851, section fourteen.

The practice under this section.—This section is framed for the purpose of meeting the contingency which will most frequently happen of there being no

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petty sessions about to be holden at the time of the apprehension of the accused; and here it is that the practical difficulties in working out the act will present themselves. In very large towns where petty sessions are held daily, no great inconvenience will arise. The justices, will, of course, provide that all their petty sessions shall be applicable to the purposes of this act, and cause notice accordingly to be given pursuant to the 10th section. In rural districts, however, where petty sessions are only held at distant intervals, varying from a few days to a month, the inconveniences attending the adoption of proceedings under this act will occasionally be exceedingly great. Let the following case be supposed:—A man is taken up upon a charge of simple larceny, and the property stolen does not exceed the value of five shillings. The constable, as in duty bound, takes the accused at once before the nearest justice, who, finding that the case is within the operation of this act, decides upon its being heard at petty sessions; he consequently remands the accused to the next petty sessions. But the next petty sessions are not to be held for a month—what in the meantime is to become of the accused? He is, it appears, to be remanded in accordance with the provisions of the 11 & 12 Vict. c. 42, s. 21. That section, however, prohibits a remand for a longer period than eight days. It may, however, be said that as the 18 & 19 Vict. c. 126, enables a justice to remand until the *next petty sessions*, it is immaterial that they are to be held beyond the period of eight days from the remand.

But it may be asked, how is the justice to arrive at the opinion that the case may be proper to be disposed of by justices in petty sessions under this act? Is he to take the evidence of the facts, or to be guided alone by the statement of the prosecutor that the amount charged to be stolen does not exceed the value of five shillings? From the clause containing no provisions as to transmitting any depositions taken by such justice to the petty sessions or binding over the

witnesses to appear, it would seem that he may act alone upon an opinion formed from the charge itself without having heard any evidence upon it; and most certainly he has no functions to inquire of the accused whether or not he wishes to be tried by the justices at petty sessions, such an inquiry being only to be made by the justices themselves acting at a petty sessions holden under this act.

Assuming, then, that the justice before whom the accused is brought in the first instance is of opinion that the case may be proper to be disposed of by justices at petty sessions under this act, he will remand him accordingly. On the day, therefore, of the holding of the petty sessions, possibly at the expiration of a month, the accused is brought up from the county gaol, which may be twenty or thirty miles away. The case is then entered into, and the evidence for the prosecution failing to establish a case against the prisoner, he is ordered to be discharged. Here, then, a monstrous wrong has been done under the sanction of the provisions of this enactment. Had the justice in the first instance heard the case, the same result would have been arrived at, whilst the expense of conveying the accused to and from gaol would have been saved, the double trouble to the prosecutor and witnesses avoided, and the injustice of a month's imprisonment of the accused not inflicted. Suppose, however, that a *primâ facie* case is established before the justices at petty sessions, and the accused is asked, as provided for by the 2nd section, whether he consents that the charge against him shall be tried by them, and he does *not* consent; here are the double inquiry and the original remand again uselessly taking place; and it may so have occurred that the quarter sessions have in the mean time taken place; or during the period of the remand it may transpire that the prisoner has been previously convicted, which takes away the summary jurisdiction.

This section would appear to be still more inconvenient with reference to its application to the powers

given to justices at petty sessions under the 3rd section. By that section it will be remembered, that in any cases of simple larceny, or stealing from the person, or larceny by a clerk or servant, the justices at petty sessions held under this act have power to inquire of the accused if he is guilty or not of the charge, and upon his pleading "guilty" they may convict him. Suppose, therefore, that a party is arrested and brought before a single justice upon one of the foregoing charges. The justice has no right to anticipate or inquire as to whether or not the accused will plead guilty; he therefore takes the examinations in the usual way: as a single justice, he has no right to ask the accused if he is guilty, since this question can be put alone to him by the justices at petty sessions, and as it is only a plea of guilty which in such a case gives them a power to deal summarily, it necessarily follows that a single justice has no power to remand a case within the 3rd section to the justices at petty sessions, but that, having once entered upon it, he must go through with it.

The 6th section provides for the forfeiture of the recognizance of the accused in the event of his not appearing upon a remand.

The 7th section provides for the transmission to and filing at the quarter sessions of the conviction or duplicate of the certificate of dismissal, &c.

The 8th section enables justices to order the restitution of property when the accused is convicted; and this section is noticeable for a species of carelessness much to be reprehended. It speaks of the *restitution of the property stolen, taken, or OBTAINED BY FALSE PRETENCES*. Now, under the act the justices have no jurisdiction to deal summarily with cases of obtaining property by *false pretences*. As the bill originally appeared in the House of Commons it included this class of offences, but it was struck out in committee, and by an oversight the present clause was allowed to stand unamended.

Petty sessions under the act to be an open court
—*Notice of holding.*.]—The 9th section enacts—

Every petty sessions for the purposes of this act shall be an open public court, and shall be the petty sessions holden for a petty sessional division; and a written or printed notice of the days and hours for holding such petty sessions shall be posted or affixed by the clerk to the justices of petty sessions upon the outside of some conspicuous part of the building or place where the same are held.

Section 10 enacts that the provisions of the 11 & 12 Vict. c. 43 (*An Act to Facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Summary Convictions and Orders*) are not to be construed as applying to any proceedings under this act. The object of this would appear to be to declare that although the proceedings under the present act are of a summary nature, they are not to be classed as ordinary summary convictions.

Effect of a conviction under this act..]—Section 11 enacts that—

Every conviction by justices in petty sessions under this act shall have the same effect as a conviction upon an indictment for the same offence would have had, save that no convictions under this act shall be attended with any forfeiture.

From the wording of this section it would seem that a conviction under this act may be charged as a previous conviction in an indictment for a subsequent felony; though we doubt if this was intended by the Legislature.

Effect of a Certificate of Dismissal..]—Section 12 enacts that—

Every person who obtains a certificate of dismissal, or is convicted under this act, shall be released from all further or other criminal proceedings for the same cause.

Sect. 13 provides that no conviction, &c., shall be

quashed for want of form, nor any warrant of commitment upon a conviction be held void, if it be therein alleged that the offender has been convicted, and there be a good and valid conviction to sustain the same.

Sect. 14 provides for the payment of the expenses of the prosecutor and witnesses, and also for the fees of the clerks to the magistrates in petty sessions and the clerk of the peace: (*see the section in the act, post.*)

Sect. 15 provides for the holding of the petty sessions under this act, within certain public buildings in the county, &c.

Sect. 16 empowers any one of the metropolitan police magistrates to do all acts authorized by this act, &c.

Sect. 17 provides that the present act is not to affect the provisions of the 10 & 11 Vict. c. 82, and the 13 & 14 Vict. c. 37 (*The Juvenile Offenders Acts*), and it declares that this act shall not extend to persons punishable under those acts as far as regards offences for which such persons may be punished thereunder.

Sect. 18 provides for compensating clerks of the peace and other officers of the courts of quarter sessions for loss of emoluments in respect of the operation of this act: (*see the section in the act, post.*)

Sect. 19 gives power to increase the salary of the chief metropolitan magistrate.

Sect. 20 has reference to clerks of assize.

Sect. 21 repeals so much of the 12 Ric. 2, c. 10, and 14 Ric. 2, c. 12, as has reference to the payment of wages to justices.

Sect. 22 provides for the giving of compensation to the party aggrieved in respect of any injury to real or personal property, notwithstanding he may have been examined as a witness.

Sect. 23 is an interpretation clause.

CHAPTER XV.

APPLICATIONS BY MARRIED WOMEN DESERTED BY THEIR HUSBANDS FOR ORDERS TO PROTECT THEIR PROPERTY.

THE new jurisdiction conferred upon justices by the 21st section of the 20 & 21 Vict. c. 85 (*An Act to amend the law relating to Divorce and Matrimonial Causes in England*) is so novel and important that it will fitly be the subject of consideration in these pages. The section purports to give protection to married women deserted by their husbands in the possession of property which they may have acquired during such desertion.

The section is as follows :—

A wife deserted by her husband may at any time after such desertion, if resident within the metropolitan district, apply to a police magistrate, or if resident in the country to justices in petty sessions, or in either case to the court, for an order to protect any money or property she may acquire by her own lawful industry, and property which she may become possessed of, after such desertion, against her husband or his creditors, or any person claiming under him ; and such magistrate or justices or court, if satisfied of the fact of such desertion, and that the same was without reasonable cause, and that the wife is maintaining herself by her own industry or property, may make and give to the wife an order protecting her earnings and property acquired since the commencement of such desertion, from her husband and all creditors and persons claiming under him, and such earnings and property shall belong to the wife as if she were a *feme sole* ; provided always, that every such order, if made by a police magistrate or justices at petty sessions, shall, within ten days after the making thereof, be entered with the registrar of the County Court within whose jurisdiction the wife is

resident; and that it shall be lawful for the husband, and any creditor or other person claiming under him, to apply to the court, or to the magistrate or justices by whom such order was made, for the discharge thereof: provided also, that if the husband, or any creditor of or person claiming under the husband shall seize or continue to hold any property of the wife after notice of any such order, he shall be liable, at the suit of the wife (which she is hereby empowered to bring), to restore the specific property, and also for a sum equal to double the value of the property so seized or held after such notice as aforesaid: if any such order of protection be made, the wife shall during the continuance thereof be and be deemed to have been, during such desertion of her, in the like position in all respects, with regard to property and contracts, and suing and being sued, as she would be under this act if she obtained a decree of judicial separation.

It will thus be seen that the section in a very few lines deals with a vast variety of matters, and is fairly open to the censure of vagueness, looseness, and uncertainty. In truth, there is subject-matter in these few lines for a good sized act of Parliament; and if grave difficulties shall hereafter arise in carrying out the provisions of the section, or in giving an interpretation to its language, the fault will undoubtedly rest with the Legislature.

Considerations before applying for an Order.—It will be convenient to deal with this clause in parts, taking them in the order in which we find them. Before, however, doing so, it will be well to call attention to the legal position of a woman who, taking advantage of its protecting influence, applies for and obtains an order. It will be observed that the concluding sentence of the section declares that, "If any such order of protection be made, the wife shall during the continuance thereof be and be deemed to have been, during such desertion of her, in the like position in all respects, with regard to property and contracts, and suing and being sued, as she would be under this act if she had obtained a decree of judicial separation." This being so, it will be asked, what would have been her position if she *had*

obtained a decree of judicial separation? It is with respect to *contracts* and *torts* declared by section 26 to be this: "The wife shall, whilst so separated, be considered as a *feme sole* for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceeding," &c.

Thus then, instead of possessing the immunity and privileges which coverture confers, she will become liable for her contracts and torts as though she were an unmarried person. It is well that this should be borne in mind at the outset, since it may be, that the advantages of an order of protection under the statute may be countervailed a hundredfold by the personal liability which it casts upon the wife; it being remembered that when once such an order is made there are no means by which, at the instance of the wife alone, it can be revoked; and hence when imagining that she is protecting her property against her husband and his creditors, she may find that she is incurring responsibilities which may result in incarceration in a debtors' gaol.

The application for an order—Proceedings ex parte.]—Supposing all this duly weighed and it is decided to take advantage of the section, the first step will be to apply to justices at petty sessions for an order of protection. This proceeding, it should seem, is *ex parte*, and no summons or other notice need be served, or be attempted to be served upon the husband; indeed, the very ground of the application—the desertion—clearly indicates that a summons to him to answer the application would be idle and abortive, and it will be seen that the section gives the husband a power after the order is made to apply for its discharge.

To what justices the application to be made.]—The application is to be made to justices at a petty sessions, and although it is not made a condition that the petty sessions shall be those of the division in which the woman is residing, it will be right and proper that they should be the petty sessions of the division.

The mode of the application.—When before the justices at petty sessions the woman must prove her case by giving evidence by herself and witnesses (if any) of the facts justifying the granting of the order. The section does state in what manner she is to do this. It does not in terms require *a written deposition*, nor any deposition *upon oath*, but it will nevertheless be well that her deposition and those of her witnesses should be taken in writing upon oath and be signed by them.

Proof of desertion.—The foundation of the application is the desertion by the husband, and this fact must be proved by clear and positive evidence. As to what amounts to a desertion? this is for the justices to determine; and for the most part this will be the great difficulty with which the justices will have to deal in enforcing this section. It will readily occur to their minds that it is not every leaving of his wife against her will which will legally constitute an abandonment under this section, since the leaving may be for a temporary or necessary occasion, or be justified by her own criminal misconduct; but the abandonment must be unlawful and unjustifiable and permanent, and of such a kind and nature as to render it culpable and wrong in the husband. In fact the section requires that the justices should be satisfied that the desertion was *without reasonable cause*; and unless they are satisfied that the desertion is of this kind they have no jurisdiction to make the order.

Proof that she is maintaining herself by her own industry or property.—In addition to the fact of desertion, the woman must show that she is maintaining herself by her own industry or property; so that if she be living with her friends, or has a marriage settlement which affords her the means of support, or has a sufficient allowance from her husband, it would seem that she will have no right to obtain an order.

The proof to be required by the justices.—To justify the justices therefore in making an order they must be satisfied—

FIRST, of the fact of desertion; and in this they should require proof of the marriage.

SECOND, that the desertion was without reasonable cause.

THIRD, that the wife is maintaining herself by her own industry or property.

If satisfied of these particulars they will make the order.

The statute gives no form of order, but it is conceived that the following may be safely adopted :—

FORM OF ORDER OF PROTECTION.

— } At petty session of the peace holden at , in and for
to wit. } the petty sessional division of , in the county
of , this day of , 185 , before us the under
signed of Her Majesty's justices of the peace acting in and for
the said county.

Whereas A. B., the wife of C. D., now residing at , did on this day of aforesaid, personally apply to us the undersigned for an order under the provisions of an act passed in a session of Parliament, holden in the twentieth and twenty-first years of the reign of Her Majesty Queen Victoria, entitled "An act to amend the laws relating to divorce and matrimonial causes in England," to protect any money or property she may acquire by her own lawful industry, and property which she may become possessed of after the desertion of her by her said husband (which desertion she alleges took place on the day of), against her said husband, or his creditors, or any person claiming under him.

And whereas we, the said justices, having duly examined the said A. B., and such other witnesses as she hath produced, touching the premises upon oath, are satisfied that the said C. D., her said husband, did desert the said A. B. on the day of , and hath from thence hitherto continued to desert her; and that the said desertion was without reasonable cause; and that the said A. B. is maintaining herself by her own industry or property; we do hereby make and give to the said A. B. this our order protecting her earnings and property

acquired since the commencement of such desertion as aforesaid, from the said C. D., her husband, and all creditors and persons claiming under him.

Given under our hands and seals at the petty sessions aforesaid.

E. F. [L. S.]

G. H. [L. S.]

The order to be entered with the Registrar of the County Court.—This order when obtained is, by the before-mentioned section, within ten days after the making thereof, to be entered with the registrar of the County Court, within whose jurisdiction the wife is resident.

Proceedings by husband or creditors to discharge the order.—The section provides for the right of the husband, and any creditor or other person claiming under him, to apply to the justices by whom such order was made for the discharge thereof. The course of proceedings for carrying out this object is not stated, but inasmuch as the wife is deeply interested in it she should be duly summoned to show cause why the said order should not be discharged, and here it would be advisable that the justices should act with the same caution and care as though they were proceeding upon an information with reference to a summary conviction.

Grounds for Discharging the Order.—As to what are to be the grounds or conditions upon which the justices may discharge the order nothing is said by the section itself; and it may, therefore, be asked, is the applicant to be at liberty to controvert the facts upon which the order was originally made? It is conceived that he is to be; and this for the reason that the former order was made *ex parte*, and without his having been called upon to show cause against it; and that he ought not be concluded by a statement of fact he had no opportunity of controverting. He may, therefore, give in evidence (and herein he will be

himself a lawful witness) any facts which would have influenced the justices had they come to their knowledge in refusing the original order ; or he may show that the condition of things which rendered the former order desirable no longer exists, and it is also conceived that, upon such application, the mere expression of a desire on the part of a wife that the order should be discharged would be sufficient to justify the justices in discharging it, it being remembered that the law favours domestic harmony, and imposes no restriction upon man and wife in their desires and efforts to live together in the enjoyment of their mutual marital rights.

What to be done by the justices upon the application.—It is especially worthy of notice that whilst the section thus gives the husband, and any creditor, or other person claiming under him, a right to apply to the justices to discharge the order, no express power whatever is conferred upon them to discharge it ; nor are the justices in terms required to take any action whatever upon the application. However, as it was undoubtedly in the mind of the Legislature that the justices should act upon such application and come to some decision, it is conceived that they ought fully to hear the application, and if they are of opinion that the order should be discharged, to make an order of the following kind:—

FORM OF ORDER DISCHARGING ORDER OF PROTECTION.

— } At a petty session of the peace holden at , in and for
to wit. } the petty sessional division of in the county of
 this day of , 185 , before us the undersigned of
 Her Majesty's justices of the peace acting in and for the said county.

Whereas heretofore, to wit, on the day of , 185 ,
 A. B., the wife of C. D., then residing at , applied to us, the
 undersigned, for an order under the provisions of an act passed in a
 session of Parliament holden in the twentieth and twenty-first years of
 the reign of Her Majesty Queen Victoria, entitled "An act to amend
 the law relating to divorce and matrimonial causes in England,
 [M. C.] X

to protect any money or property she may acquire by her own lawful industry and property, and the property she may become possessed of after the desertion of her by her said husband the said C. D. (which desertion she alleged took place on the day of), against her said husband, or his creditors, or any person claiming under him.

And whereas we, the said justices, having then duly examined the said A. B. and such other witnesses as she produced touching the premises, upon oath, and having been then satisfied that the said C. D. did desert the said A. B. as alleged, and that the said desertion was without reasonable cause, and that the said A. B. was then maintaining herself by her own industry or property, did then and there make and give to the said A. B. our order bearing date the said day of , protecting her earnings and property acquired since the commencement of such desertion as aforesaid, from C. D., her said husband, and all creditors and persons claiming under him.

And whereas application hath this day been made to us by the said C. D. the said husband of the said A. B. to discharge the said order, and the said A. B. now appearing before us, and we having examined both the said C. D. and the said A. B. and such other witnesses as they produced, upon oath, touching the matter of such application as last aforesaid, and having duly considered the premises, do hereby discharge the said order of the said day of , so made and given to the said A. B. as aforesaid.

Given under our hands and seals at the petty sessions aforesaid.

E. F. [L. s.]

G. H. [L. s.]

To what justices the application to be made.—It will be observed, that the section requires this application should be made to the justices by whom the original order was made. This, however, must merely mean that the application is to be made to the magistrates at the same petty sessional division, not that it is to be made to the same individual magistrates, since many of them may be dead or no longer acting in the locality.

As to vacating entry of former order with the registrar.—It will also be remarked, that it is provided by the section that the original order of protection is

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within ten days after it is made be entered with the registrar of the County Court, within whose jurisdiction the wife is resident; but that there is no provision for vacating such entry in the event of the original order being discharged.

When proceedings to be before a metropolitan police magistrate.]—If the wife be resident in the metropolitan district, her application for an order is to be made to a police magistrate who has all the powers of justices at petty sessions.

CHAPTER XVI.

ARTICLES OF THE PEACE AND SURETIES TO KEEP THE PEACE.

When Articles of the Peace may be exhibited.—If a party has sustained violence from another, and has reason to believe that it will be repeated, or if without actual violence having been committed he has been threatened with it either by words or gestures, and therefore goes in bodily fear, he may compel the offender to enter into a recognizance, with sureties to keep the peace towards him.

The facts necessary to support Articles of the Peace.—To warrant an application against another for sureties to keep the peace, the applicant must make it appear from reasonable evidence that the party against whom he applies intends personal violence against him: (1 Hawk. c. 60, s. 6.) But actual violence or even threats will not be essentially requisite to furnish this evidence, it may consist in the looks, gestures, or conduct of the party; but in such case it will be necessary for the complainant to depose to his belief that such conduct in fact amounts to a threat of personal violence: (*Reg. v. Dunn*, 12 A. & E. 559; 18 L. J. 41, M. C.) The complaint, however, should be made soon after the cause of fear has arisen: (*Dennis v. Lane*, 6 Mod. 131); and the threat itself should not be merely a conditional or contingent one to be executed on the complainant's doing something which he has no right to do, or which it was not necessary for him to do in the course of his business. But if it is so necessary,

then such a threat may be a proper foundation for the application : (*Reg. v. Mallinson*, 20 L. J. 33, M. C.)⁽¹⁾

By whom Articles may be exhibited.—This application may not only be made by a party in respect of threats against himself, but also by him for threats used against his wife or child (*Dalt. c. 116*); but not for threats against his servants, since they may themselves apply for sureties. A wife also may make the application against her husband, or a husband against his wife : (1 *Hawk. c. 60, s. 2* ; *Rex v. Doherty*, 13 East, 171.) Against peers and peeresses the application must either be to the Court of Queen's Bench or the Court of Chancery.

If the defendant be not in custody, the proper and regular course will be for the complainant to lay an information upon oath before a magistrate. The following may be the form :—

ARTICLES OF THE PEACE.

—' } The information and complaint of A. B., of , in the
to wit. } parish of , in the county of , gentleman,
taken before me, E. F., one of Her Majesty's justices of the peace, in
and for the said county, on the day of , 185 , who, being
sworn, upon his oath saith, that C. D., of in the said county,
labourer, did, on the day of , now last past, threaten
(*here state the threats or other acts of which the complainant complains
in the very words used, according to the facts as they took place*); and
that from the above and other threats used by the said C. D. towards
the complainant, he, this complainant, is afraid that the said C. D.
will do him some bodily injury ; and, therefore, he prays that the said
C. D. may be required to find sufficient sureties to keep the peace,
and be of good behaviour towards him, this complainant. And this

(¹) This right to apply for sureties to keep the peace exists only where the apprehension is of personal violence, and does not exist where the threat is merely to injure a man's property (except, indeed, firing his house.)

complainant says, that he does not make this complaint against the said C. D. from any malice or ill will, but merely for the preservation of his person from injury.

Taken and sworn before me,

A. B.

at

E. F.

Discretion of Justices upon Articles being preferred.]

—Upon this, the magistrate will form his own opinion as to whether or not the facts stated really amount to a threat of personal violence. It is not enough that the complainant swears to an apprehension of personal violence, the conduct imputed to the defendant should be shown to be such as to make that impression upon the minds of impartial and dispassionate men. If the justice is satisfied upon this subject, he will issue either his summons or warrant for the appearance of the defendant.

If a summons is to issue, it may be in the following form :—

SUMMONS TO A DEFENDANT TO ANSWER TO ARTICLES
OF THE PEACE.

— } To C. D. of labourer.
to wit, } Whereas information hath this day been laid before the undersigned (*one*) of Her Majesty's justices of the peace in and for the said (*county*) of , for that (*here state shortly the matter of the information.*) These are therefore to command you in Her Majesty's name, to be and appear on at o'clock in the forenoon, at , before such justice or justices of the peace for the said (*county*), as may then be there to answer to the said information and to find sureties to keep the peace towards Her Majesty and all her liege people, and especially towards the said A. B., and to be further dealt with according to law.

Given under my hand and seal this day of , in the year of our Lord , at , in the (*county*) aforesaid.

J. S. [L. S.]

This summons should be served by the constable in the way pointed out at pages 29 and 40, *ante*.

If the justice determines upon issuing a warrant in the first instance, it may be in the following form :—

WARRANT OF APPREHENSION TO ANSWER TO ARTICLES
OF THE PEACE.

— } To the constable of , and all other peace officers in
to wit. } the said (county) of .

Forasmuch as A. B., of , gentleman, hath this day made oath before me, J. P., one of Her Majesty's justices of the peace, in and for the said (county) of , that (*stating the information to the end, but in the third person and in the past tense.*) These are therefore to command you in Her Majesty's name forthwith to apprehend the said C. D., and bring him before me, or some other of Her Majesty's justices of the peace in and for the said (county), to answer to the said information, and to find sureties as well for his appearance at the next General Quarter Sessions of the Peace to be holden for the said (county), as also in the meantime to keep the peace towards Her Majesty and all her liege people, and especially towards the said A. B.

Given under my hand and seal this day of , in the
year of our Lord , in the (county) aforesaid.

J. S. [L. S.]

If the defendant be already in custody upon an affray, no formal information is requisite ; and it is only when a warrant is to issue for his apprehension, that the information need be in writing and upon oath.

Proceedings upon the Hearing.—Upon the appearance of the defendant, the information, if it have been previously taken in writing on oath, is read over to him, and he is asked if he have any cause to show why he should not enter into his recognizances and give the required sureties to keep the peace ; or if no information has been previously taken in writing, the complainant will state the facts upon which he founds his right to have the defendant bound ; and he may support his case by the testimony of witnesses.

Upon the hearing of such an application, the defendant cannot be permitted to deny the truth of the facts stated in the information : (*Lord Vane's case*,

2 Str. 1202 ; *Rex v. Doherty*, 13 East, 171 ; *Rex v. Dunn*, 12 A. & E. 599.) If the articles are untrue in fact, the remedy of the defendant is by indictment for perjury, or an action on the case. He may, however, either by cross-examination or witnesses of his own explain any parts of the complaint which are ambiguous, or may show that the words or acts do not fairly raise the inference sought to be raised from them : (*Rex v. Bringloe*, 13 East, 174, *n.* ; *Rex v. Tregarthen*, 5 B. & Ad. 678 ; *Reg v. Dunn*, 12 A. & E. 599 ; *Reg. v. Stanhope*, 12 A. & E. 620.)

Decision of Justices.—If the justices decide upon calling upon the defendant to enter into recognizances to keep the peace, they will determine whether they shall be to appear at the sessions to answer the charge, and in the mean time keep the peace, or at once for a definite period. The former course is now very rarely adopted, but the justices at once bind over the party for a time certain.

Number of Sureties, amount of recognizance, and the time for which to be taken.—The number of the sureties, the amount of the recognizance, and the time for which the recognizance is to be taken, will be entirely in the discretion of the magistrates, their discretion being guided by the nature of the charge, the position, means, and character of the defendant. It is usual to require the defendant to enter into his own recognizance with two sureties, though cases will often occur in which the defendant's own recognizance is deemed sufficient. In very ordinary cases the party is himself bound in 20*l.*, with a surety or sureties in 10*l.* each ; but it is obvious that the amount must be altogether dependent upon circumstances. The time for which the defendant is to be bound is also perfectly discretionary, varying from a month or two to a very much larger period. The justices, however, will be careful not to extend the time to an unnecessary length, since they will thereby throw great difficulties in the way of procuring sureties.

In *Prickett v. Gratrex* (8 Q. B. 1020 ; 15 L. J. 145, M. C.), Lord Denman observed, that "the power of committing a party until he find sureties for his keeping the peace, is a necessary power for the protection of individuals from personal violence ; but it is also a very great power, and should be exercised with caution and kept within proper bounds ;" and Mr. Justice Erle, in a recent charge to the grand jury at Cornwall, remarked that "there was one matter to which he wished particularly to call the attention of the magistrates. He perceived by the calendar, that one man was committed to prison for a breach of the peace for two years, or until he should find sureties ; and several were sentenced under a similar charge of a breach of the peace for twelve months, and shorter periods, or until they should find sureties. For a sentence of two years' imprisonment, the offence should be one of considerable magnitude : indeed, there was no doubt such a sentence was legal, but the case ought to be very extreme in point of guilt. It was advisable to apportion punishment according to the degree of the offence. To commit a man for want of sureties, might be inflicting a long imprisonment upon a friendless man ; and subjecting a man to a long imprisonment for want of friends, was not a measure of penal punishment that ought to be adopted."

Commitment in default.]—The commitment in default of finding sureties must be for a definite period : (*Prickett v. Gratrex*, 8 Q. B. 1020 ; 15 L. J. 145, M. C.) In default of finding the sureties as required, the defendant will be committed for the time required, unless in the mean time he enters into the recognizance with his surety or sureties. But by section 3 of the 16 Vict. c. 30, it is enacted that "no person committed to prison under any warrant or order of one justice of the peace for or on account of not entering into recognizance or finding sureties to keep the peace or to be of good behaviour, shall be detained under such warrant or order

for more than twelve calendar months from the time of such commitment."

The following may be the form of commitment :—

COMMITMENT FOR WANT OF SURETIES TO KEEP THE PEACE.

— } To E. F., the constable of in the said county, and
to wit. } also to the Keeper of Her Majesty's Gaol (or House of
Correction, at) for the said county, and others whom this may
concern.

Whereas A. B., of &c. (*here recite the complaint as in the warrant*), and whereas the said C. D. was this day brought and appeared before me, J. P., one of Her Majesty's justices of the peace in and for the said county, at &c., to answer the said complaint; and I, the said justice, have ordered and adjudged, and do hereby order and adjudge, that the said C. D. shall enter into his own recognizance in the sum of £., with two sufficient sureties in the sum of £. each, to keep the peace towards Her Majesty and all her liege people, and particularly towards the said A. B. for the term of now next ensuing. And insomuch as the said C. D. hath refused and still refuses to enter into such recognizance, and to find such sureties as aforesaid, I do hereby require and command you the said constable, forthwith to convey the said C. D. to the Common Gaol (or House of Correction at) of the said county, and to deliver him to the keeper thereof, together with this warrant. And I do also require and command you, the said keeper, to receive the said C. D. into your custody in the said gaol, and him there safely to keep for the space of , unless he in the meantime enter into such recognizance with such sureties as aforesaid, to keep the peace in the manner and for the term above mentioned. Herein fail not.

Given under my hand and seal this day of , &c.
J. P. [L. s.]

Upon this the defendant will be committed to prison. At any time, however, before the expiration of the period limited for his imprisonment, he will be entitled to his discharge upon entering into the recognizance as required.

Entering into recognizance by the Defendant.—If the defendant is willing and ready to comply with the

decision of the magistrates, his recognizance and that of his sureties should be taken in the following form:—

RECOGNIZANCE TO KEEP THE PEACE.

— } Be it remembered, that on, &c., A. B., of in the county
to wit. } aforesaid (*yeoman*), C. D., of the same place (*yeoman*),
and E. F., of the same place (*yeoman*), came before me, G. H., esquire,
one of Her Majesty's justices of the peace, assigned to keep the peace
in and for the said county, and acknowledged themselves to owe to our
said Lady the Queen, to wit, the said A. B., the sum of £, and
the said C. D. the sum of £, and the said E. F. the sum
of £, of good and lawful money of Great Britain, to be re-
spectively made and levied of their several goods and chattels, lands,
and tenements, to the use of our said Lady the Queen, her heirs and
successors, if he, the said A. B., shall fail in performing the condition
underwritten.

Acknowledged before me,

G. H.

CONDITION.

The condition of this recognizance is such, that if the above bounden A. B. shall keep the peace towards the Queen and all her liege people, and especially towards L. M., of , in the said county (*gentleman*), for the term of now next ensuing, then the said recognizance shall be void, or else remain in its full force.

Enforcing forfeited recognizances.]—The 16 Vict. c. 30, s. 2, provides the means to be taken to enforce forfeited recognizances.

As to costs.]—By the 18 Geo. 3, c. 19, s. 1, magistrates were enabled in all cases of complaints upon which any summons or warrant issued to award costs; and, therefore, upon an application of this kind, costs may have been awarded. But as this section, together with some others, is repealed by section 36 of the 11 & 12 Vict. c. 42, and proceedings of this nature are not within the terms of this last-mentioned act, there now exists no power to order costs from either party.

It may be here again mentioned that, upon an

application for sureties to keep the peace, justices have no functions to deal summarily with the case as one of common assault : (*Reg. v. Deny*; 20 L. J. 189, M. C.) Upon the subject of sureties for *good behaviour*, the reader is referred to Burn's Justice.

GENERAL RULES FOR THE GUIDANCE OF PRACTITIONERS.

In the foregoing chapters the entire general practice, applicable to the usual and ordinary subject-matters cognisable at petty sessions has been fully described. Under the two principal heads of summary convictions and orders, and charges of indictable offences, a course of procedure has been set forth, not only available in the instances to which it is specially applicable, but useful in most others as indicating the practice most desirable to be adopted. It will, however, readily occur to the practitioner that, with the multitudinous varieties of matters over which justices at petty sessions have jurisdiction, there can be no unvarying and universal code of practice. To have described, therefore, in detail all the numerous modes by which the justices in petty sessions are put in motion, would have been to have swollen these pages to a bulk injurious to, if not destructive of, their practical utility, without in any way materially assisting to the elucidation of the subjects. Having before him the two grand courses of procedure indicated in the preceding pages, no reasonable difficulties can present themselves to the practitioner in pursuing the branches which spring from or are associated with them.

With a full comprehension of the foregoing details, all other kinds of procedure before justices at petty sessions will be readily intelligible and easy of execution. Deriving their authority in every instance from the direct enactments of some statute, the justices will have for their guide in each matter requiring their interference the directions contained in some act of

Parliament. To such enactments the practitioner in each instance should apply when his services are called into requisition, for in them he will find the course pointed out which it is proper for him to pursue. If the case be one determinable upon summary conviction, he will decide for himself according to the rules laid down at pages 8 and 9, whether the code contained in the 11 & 12 Vict. c. 43, is to be adopted or not. If it be a charge of an indictable offence, he will see that the practice will be governed by the 11 & 12 Vict. c. 42. If, however, the case do not fall within the operation of either of these statutes, he will search the act of Parliament for information as to the course to be followed. If the matter be one to be dealt with upon summary conviction, and it is not within the operation of the 11 & 12 Vict. c. 42, he will, nevertheless, find the course of proceeding very analogous to that therein described. If, however, the matter to be dealt with partake neither of the nature of a summary conviction nor the hearing of a charge of an indictable offence, it will for the most part be one of a simple character, with a mode of procedure clearly described in the statute giving jurisdiction, and presenting no difficulties which a knowledge of the mode of procedure generally before magistrates will not readily enable the practitioner to overcome.

But in all cases the golden rule to be observed upon the subject of proceedings before justices is—to consult the statute upon which those proceedings are founded, upon no occasion should this be omitted. The six portly volumes (and their supplement) of Burn's Justice sufficiently attest the wide scope of the jurisdiction of justices. The subjects to be dealt with are of infinite variety; and it is only by looking into the statutory enactments regulating each particular matter, that the magistrate or practitioner can feel a proper confidence in the course he is taking.

Having therefore described with sufficient minuteness the practice generally upon summary convictions and orders, and the hearing of charges of indictable

offences, which are the two great subject-matters ordinarily engaging the attention of magistrates or practitioners at petty sessions, it is needless to encumber these pages by a description of the practice upon the endless variety of minor subjects which rarely present any points of difficulties; and which, with the assistance of what has hereinbefore been set down, can, for the most part, be easily gathered from the statutes by which they are governed.

CHAPTER XVII.

PROCEEDINGS IN THE COURTS OF SPECIAL SESSIONS.

A SPECIAL SESSION, as before has been pointed out (*ante*, p. 3), is a special meeting of the justices of a division or other locality, convened under the authority of some statute for the purpose of the transaction of a particular kind of business, such as the granting of licenses and the hearing of appeals, and at which meeting all the acting justices of such division or other locality should have an opportunity of attending. Various acts of Parliament have required that the justices of divisions shall periodically assemble together, for the purpose of carrying out certain objects. In many of these acts the exact period of assembling is provided for; in others, this is entirely left to the discretion of the justices; but under all of them it is a requisite that all the justices within the limits for which such session is held should have an opportunity of attending; and where notice is required to be given (as often is the case) to each justice of the holding of such session, that such notice should be so given a reasonable time before the meeting: (*Rex v. The Justices of Worcestershire*, 2 B. & Ald. 228.)

The subjects over which justices at special sessions have jurisdiction are both numerous and varied, and have reference to the licensing of alehouses, billiard-rooms, dealers in game, and theatres; the appointment of constables and overseers of the poor; the allowance of the list of jurors; the hearing of appeals against highway and poor rates; various duties under the Highway Act, and other matters.

Into these various subjects, involving as they do no real technical matters of practice, it is not the purpose of these pages to enter. The practitioner who desires full information with reference to any of them, will find it carefully collected in Dickinson's Quarter Sessions and Oke's Magisterial Synopsis.

As it may, however, be convenient to know the periods which the Legislature has appointed for the holding of special sessions for various purposes, the following monthly calendar may be deemed of use.

FEBRUARY.

Alehouses — Billiard-rooms — Licensing — Constables.]—By the 9 Geo. 4, c. 61, s. 1, the justices in every division, &c., in Middlesex and Surrey are to hold a special session, to be called "The General Annual Licensing Meeting," for the purpose of granting licenses to persons keeping inns, alehouses, and victualling houses to sell exciseable liquors by retail to be drunk or consumed on the premises; and such meeting is to be holden within the first ten days of the month of March; and by section 2, the justices of every such division are to hold, twenty-one days at least before such licensing day, a petty session, where they are by precept under their hands to appoint the day, hour, and place upon and in which such general licensing meeting shall be holden.

Billiards.]—By the 8 & 9 Vict. c. 109, s. 10, the justices of the division at such general licensing meeting are empowered to grant billiard licenses.

Constables.]—By the 5 & 6 Vict. c. 109, s. 2, the justices in each division are, within the first seven days of this month in each year, to issue a precept, under the hands of two of them, to the overseers of each parish within the division, requiring them to make out and return, before the 24th of March, a list in writing of a competent number of men within their respective parishes, qualified and liable to serve as constables, and

also to perform all other requisitions in the said precept contained ; and with the said precept notice is to be given to the said overseers of the time and place where such special session of the peace will be holden, which, by section 1, must be on some day after the 24th of March and before the 9th day of April.

MARCH.

Alehouses — Billiards — Constables — Highways — Overseers..]—By the 9 Geo. 4, c. 61, the General Annual Licensing Meeting is, in Middlesex and Surrey, to be held within the first ten days of the month of March ; and by the 8 & 9 Vict. c. 109, the keepers of billiard tables are to be licensed at the same time.

Constables..]—By the 5 & 6 Vict. c. 109, s. 1, the justices of every division, &c. are, on some day before the 24th of March and the 9th of April, to hold a special petty session for the appointment of parochial constables : (see *February*.)

Highways..]—By the 5 & 6 Will. 4, c. 50, s. 6, the surveyors of the highways are to be elected annually on the 25th of March ; and by section 44, within one calendar month after such election the preceding surveyor is to submit his accounts, signed by him, to the justices in special sessions, who are to examine him as to the truth of such accounts.

By sect. 45, the surveyor is to verify his accounts, and make the returns required by the act, to a special sessions to be holden next after the 25th of this month.

By sect. 45 also, the justices within their respective divisions are required to hold not less than eight nor more than twelve special sessions in every year for executing the purposes of the act, the days of holding which are to be appointed at a special sessions to be held within fourteen days after the 20th of March in every year.

Overseers of the Poor..]—Overseers of the poor are,

by the 43 of Eliz. c. 2, s. 1, and the 54 Geo. 3, c. 91, s. 1, to be appointed on the 25th of March, or within fourteen days afterwards, under the hands and seals of two or more justices.

And in districts where there are no auditors appointed under the 7 & 8 Vict. c. 101, the outgoing overseers are, within fourteen days after the appointment of the new overseers, to submit their accounts to the justices in special sessions to be holden within such fourteen days.

JULY.

Game.]—By the 1 & 2 Will. 4, c. 32, s. 18, the justices in each division are, in this month, to hold a special session in the division for which they usually act, for the purpose of granting licenses to deal in game: and by the 2 & 3 Vict. c. 35, s. 4, the justices are empowered to hold such special sessions at other times of the year in addition to that in the month of July.

AUGUST.

Alehouses—Billiards.]—By the 9 Geo. 4, c. 6, s. 1, the justices in each division of every county (except in Middlesex and Surrey) are to hold annually, on some day between the 20th day of August and the 14th day of September, a special session for the purpose of granting alehouse licenses; and by the 8 & 9 Vict. c. 109, s. 10, they are at the same special sessions to grant licenses for the keeping of billiard tables.

By sect. 4 of the 9 Geo. 4, c. 61, the justices at their general licensing meeting are to appoint not less than four nor more than eight special sessions to be held in the division in the year next ensuing for the transfer of licenses.

SEPTEMBER.

Jurors.]—By the 6 Geo. 4, c. 50, s. 9, the lists of jurors are to be affixed on or near the doors of all the churches and chapels, &c., in every parish on the first

Sunday in this month, and on the two following Sundays. And by sect. 10, the justices within every division are within the last seven days, on the day and at the hour appointed, to hold a special session for receiving and examining the jury lists, when and where the churchwardens and overseers for each parish are required to attend, and the lists, when approved, are to be delivered to the high constable of each division.

Appeals against Poor-rates at Special Sessions.]—Independently of the foregoing matters which are required by statute to be dealt with at stated periods, there are others, the time for transacting which is not pointed out, such as appeals against rates under the 6 & 7 Will. 4, c. 96 (The Parochial Assessment Act), which, by section 6, enacts, that the justices at every petty sessional division shall, four times at least in every year, hold a special session for hearing appeals against the rates of the several parishes within their respective divisions, and shall cause public notice of the time and place when and where such special sessions will be holden to be affixed to or near the door of the parish church of the said parishes twenty-eight days at least before the holding of the same.

Under this statute, if a party intends to appeal, it is necessary that he should give notice of his objection in writing under his hand seven days at least before the day appointed for such special session to the collector, overseers, or other persons by whom the rate was made.

Theatres.]—By the 6 & 7 Vict. c. 68, s. 5, justices acting beyond the limits of the Lord Chamberlain's jurisdiction are, within twenty-one days after a written and signed application is made to them by the person entitled to be licensed, to hold a special session for granting licenses to houses for the performance of stage plays, of the holding of which session seven days' notice is to

be given by the clerk to each justice. And by sect. 9, the justices at a special licensing session, or some adjournment, are to make suitable rules for insuring order and decency at the several theatres licensed by them, &c.

THE PRACTICE AT SPECIAL SESSIONS.

As respects the *practice* adopted in courts of special sessions—it can scarcely be said that any exists. All that can be properly said of it is, that the proceedings should be as public as the nature of the case will admit : that any person who is to be affected by the decision of the Bench should have an ample opportunity of being heard ; and that, especially in the matter of applications for licenses, the justices (though under no legal obligation to permit it) should never refuse to allow the parties to avail themselves of legal assistance. Being for the most part of the simplest possible character, and altogether the creatures of acts of Parliament, the matters to be disposed of at special sessions can never fairly present the slightest difficulty or embarrassment. As regards *practice*, in its technical sense, there is none ; though all who can in any way be affected by the proceedings at these sessions will do well to ascertain with care the peculiar statutable provisions governing the subject.

CHAPTER XVIII.

PROCEEDINGS IN THE COURT OF GENERAL QUARTER SESSIONS.

THE courts of general quarter sessions, which are established in every county in England and Wales, are tribunals having a very extensive civil and criminal jurisdiction. In these courts, not only is the great bulk of the criminal law dispensed, but a large mass of matters of a purely civil description is adjudicated upon and finally disposed of.

When courts holden.]—These courts are appointed to be held in every county at fixed periods; the 1 Will. 4, c. 70, s. 35, declares that they shall be held

In the first week after the 11th of October.

In the first week after the 28th of December.

In the first week after the 31st of March.

In the first week after the 24th of June.

A provision, however, is contained in the 4 & 5 Will. 4, c. 47, to avoid the inconvenience which might arise from the spring sessions occurring at the same time as the assizes for the county; and hence it is enacted, that the justices assembled at their winter sessions may, if they think fit, appoint two justices who are empowered, as soon as may be after the time for holding the spring assizes shall be appointed, to fix the day for holding the next general quarter sessions of the peace, so as such time shall not be earlier than the 7th of March or later than the 22nd of April, and to give notice of the day so fixed by advertisements.

The entire week, therefore, in which any one of the before-mentioned days falls is to be excluded: thus,

if the 11th of October fall on a Sunday, which is the first day of the week, the earliest day upon which the sessions can be held will be the Monday week following, that is, the 19th of the month. It is, however, competent to the justices to commence their sessions upon any day in the proper week, and having so commenced them, to continue them until they are concluded, howsoever long they may last. The day of the week for the commencement of the sessions is fixed by the rules of the sessions, and being so fixed is rarely altered.

When and before whom holden in Boroughs..]—In boroughs under the Municipal Corporations Act (5 & 6 Will. 4, c. 76), in which there is a grant of quarter sessions, the recorder is by section 105 to hold once in every quarter of a year, or at such other or more frequent times as he shall think fit, or as the Queen shall direct, a court of quarter sessions for such borough.

Where to be held..]—As regards the *place* at which the general quarter sessions are held, this is entirely within the discretion of the justices,—who usually fix upon some town which, from its size, locality, or other circumstances, such as contiguity to the county gaol presents the most obvious conveniences for the purpose. Where the accommodation of the public would be promoted thereby, it is not unusual for the justices to hold their sessions at different times of the year at different places, or to adjourn the same sessions from one town to another, or from time to time in the same town. These regulations, however, are always the subject of some rule or rules of the sessions to which access can always be had, and from which the information can be obtained.

Before whom holden in Counties..]—These sessions in counties are held before the great body of the county justices, who, in point of fact, are the judges of the court. From amongst their number, one is selected

to act as chairman, who thereupon presides at all their deliberations, and sits for the trial of all matters both civil and criminal, somewhat in the character of a chief justice, being the party personally addressed as *Mr. Chairman*, when any observations are directed to the court. In municipal boroughs, the sole judge is the recorder.

The Clerk of the Peace.—Before concluding this chapter it will be right to call attention to the *Clerk of the Peace*, who is an officer whose duties in connection with the quarter sessions are all important. This functionary is the representative of the *custos rotulorum*, who is the principal personage amongst the body of the justices (being usually also the Lord Lieutenant of the county, though the offices are essentially distinct), and is the keeper of the rolls of the peace and other official county documents. The clerk of the peace is appointed by the *custos rotulorum*. His duties are of a very extensive and responsible nature, comprising in fact the arrangement and carrying out of the practical details of the entire sessions. He is, indeed, the instrument which puts and continues in motion the entire machinery of the sessions, seeing that all the practical details are conducted with regularity, and that nothing is wanting to give proper and legal effect to the business transacted. The clerk of the peace is usually paid by fees, a table of which is settled by the justices, and approved of by the judges of assize; but by the 14 & 15 Vict. c. 55, section 9, the justices are empowered to recommend to the secretary of state that he shall be paid by a stated fixed salary, whereupon an order may be made to that effect, and the fees to be received for the future by him are to be paid over to the county treasurer.

CHAPTER XIX.

THE CRIMINAL PRACTICE OF THE QUARTER SESSIONS.

PROCEEDINGS PRELIMINARY TO THE TRIAL.

Business transacted on the first day of the Sessions.]

—The first day of the quarter sessions in counties is seldom devoted to the trial of either civil or criminal matters, being for the most part occupied in the consideration of matters connected with the general police and civil concerns of the county. These proceedings are always governed by the rules of the sessions, and before each session is held notice of their being so held, and the order in which the business is to be transacted, is usually inserted in some one or more of the local newspapers.

As, however, the grand jury are generally impanelled and sworn on such first day, and are prepared to receive bills of indictment, it is the duty of prosecutors and witnesses to be in attendance on that day.

Division of the Court.]—In counties where the business is considerable, and when it appears to the justices that it will occupy more than three days, they are empowered by the 59 Geo. 3, c. 28, to appoint two or more of their body to sit apart from themselves in some place in or near to the court, there to hear and determine such business as shall be referred to them, whilst the others are at the same time proceeding in the despatch of the other business of the sessions. When the sessions are thus divided into two courts, it

is usual in the first instance for one court to deal with the *criminal* and the other with the *civil* business.

As the practice with reference to the criminal and civil business of the sessions is essentially distinct, it will be convenient to consider each by itself ; and first, then, of the practice as it has reference to the criminal business.

THE CRIMINAL PRACTICE OF THE SESSIONS.

In considering the various steps to be taken upon the trial of offences, it will be advisable to distinguish those which are to be taken on the part of the prosecutor from those on the part of the prisoner or defendant, but at the same time to confine the inquiry in its progress within such limits as to make each stage of it complete in itself ; and to render the whole proceeding intelligible and unique it will be necessary to consider some matters which must be attended to prior to the preferring of the bill of indictment.

Proceedings of the Prosecutor on the committal of the Prisoner.—If the prosecution is of a very trivial character, or one in which the prosecutor takes little interest, he will possibly permit things to take their natural course, and thus, after the prisoner is committed to trial by the committing magistrate, take no further trouble about the prosecution until he attends at the sessions to prefer his indictment. In strict law, certainly he is bound to do no more than this. But if the case be one of any magnitude in itself, of any great concern to the prosecutor or the public, or involve any circumstances of a difficult or unusual description, he will probably think fit to take such steps before the occurring of the sessions as will ensure the charge being presented to the court in the form and under the circumstances best calculated to effect the great objects of the inquiry.

Course of proceeding if the case involve technical difficulties.—Although the more serious classes of
[M. C.]

crimes are removed from the jurisdiction of the quarter sessions, there still remains a great variety involving considerable criminal enormity ; and it not unfrequently occurs, that, among such, cases arise of a highly technical and complicated description. To get up the evidence in such as these, and to frame the indictment with skill and accuracy, are matters requiring the agency of competent professional advisers. If, therefore, any such case should occur, it will probably be thought desirable on the part of the prosecutor to have the indictment drawn by counsel. This course, although involving some additional expense, has the advantage of securing perfect accuracy, and of enabling the prosecutor at the opening of the sessions to go at once before the grand jury, without waiting until it is convenient for the clerk of the indictments to draw the bill.

How to compel the attendance of Witnesses who were not before the committing Magistrate.—It will often happen that, in the interval between the committal and the sessions, additional evidence is procured in support of the charge, not given before the committing magistrate ; and when this is the case, and the prosecutor desires to avail himself of it, he should secure the attendance of the witness upon the trial by serving him with a *subpœna*. Subpœnas for this purpose are of two kinds : first, a subpœna obtained from the clerk of the peace ; and second, a subpœna obtained from the Crown Office. Upon application to the office of the clerk of the peace, a subpœna in the particular case will be granted. A copy of this should be served upon the witness a reasonable time before the sessions. It will be advisable at the time of service to tender him a sufficient sum as conduct money to the sessions, but this is a matter of prudence rather than of legal necessity, for in criminal cases in which the witnesses are allowed their expenses, they cannot demand them before giving their evidence : (*R. v. Cooke*, 1 C. & P. 321 ; *Dick.* 21, 6th ed. p. 149.) This subpœna, how-

ever, is only compulsory within the county in which it is issued, and should the witness disobey it, the only means of punishment are by indictment. If, therefore, the witness is beyond the limits of the county, and a more stringent process is thought desirable, a *Crown Office subpoena* should be obtained and served, such process running into all parts of the United Kingdom, and the witness being liable to an attachment from the Court of Queen's Bench on disobedience: (*R. v. Brownell*, 1 A. & E. 598; *Reg. v. Greenaway*, 7 Q. B. 126; *Reg. v. Carey*, 7 Q. B. 126.) If the witness is required to produce any document in his possession, the subpoena will be *duces tecum*.

How to procure a Witness who is in gaol—Habeas corpus..]—If the witness whose testimony is required is in prison or other confinement, a writ of *habeas corpus ad testificandum* is necessary, and to obtain it an affidavit must be made by the party applying, stating the imprisonment of the person, that he is a material and necessary witness, that the trial cannot safely proceed without him, that such trial or matter is pending and will be inquired into at a certain time and place, &c. &c. Upon this affidavit being laid before one of the superior judges at chambers, he will grant his fiat and indorse his name upon the writ. The writ must then be taken to the Crown Office, where it will be signed and sealed. It should then be delivered to the gaoler in whose custody the prisoner happens to be, and, at the same time, his expenses should be tendered (not exceeding one shilling a mile) for bringing up the prisoner.

The following should be the form of the writ:—

HABEAS CORPUS AD TESTIFICANDUM.

Victoria by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, defender of the faith, to the keeper of our gaol at _____, of and for our county of _____, greeting. We command you that you have before our justices assigned to keep the peace in and for our county of _____, at the general quarter sessions of the peace to be

holden at _____, in and for the said county, on _____, the body of A. B. being committed and detained in our prison under your custody as is said, then and there to testify the truth and give evidence on our behalf against C. D. for (*a felony*), and so from day to day until the said A. B. shall have given his evidence as aforesaid. And when he shall have given his evidence, then that you take him back without delay to our said gaol under your custody, and cause him to be detained therein under safe custody until he shall be from thence discharged by due course of law.

Witness, John Lord Campbell at Westminster the _____ day of _____, in the _____ year of our reign.

By the Court.

(*The name and address of the attorney suing out the writ must be indorsed.*)

Obtaining a Copy of the Depositions.—If it is intended that the prosecution shall be conducted by counsel, it will be prudent to obtain of the magistrate's clerk a copy of the depositions, in order that they may be copied verbatim into the brief. This copy will be furnished upon payment for the same at a certain sum per folio: (see *ante*, p. 190.)

Notice to produce.—It will possibly occur that the defendant is in possession of some letter or other document which it will be necessary the prosecutor should give in evidence as a part of his case upon the trial. To enable him to do so, it will be requisite he should give a notice to produce, which being given, he will have a right on its non-production to give secondary evidence of its contents. The notice may be in the following form:—

NOTICE TO PRODUCE.

<i>Quarter Sessions for the</i>	} The Queen on the prosecution of A. B.
<i>county of _____, holden on the</i>	
<i>day of _____, 185 _____</i>	
	against
	C. D.

Take notice, that you are hereby required to produce to the court and jury on the trial of this indictment a certain (*here describe the document required*) and all other documents, letters, books, papers, and writings

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whatsoever containing any entry, memorandum, or minute, or other matter in anywise relating to the matter in question in this indictment.

Dated this day of , 185 .

Yours, &c.

E. F., attorney for A. B. the above-named
prosecutor,

or,

A. B. the prosecutor above named.

To C. D. the above-named }
defendant. }

When Notice not necessary.—It is not, however, in every case in which a document required for the prosecution is in the hands of the defendant, that a notice to produce need be given; thus, it is not necessary where the charge itself implies that the instrument is in his possession, such instrument being the very object of the proceedings, as on an indictment for stealing a security, in which case parol evidence of its contents may be given without any notice to produce: (*R. v. Aickles*, 1 Leach, 294.) So, on an indictment for forging a note which the prisoner in his apprehension has swallowed or destroyed: (*Dick. Q. S. 516.*) The notice should state with substantial accuracy the document required, for a notice merely to produce "all letters, papers, and documents relating to the cause," has been considered to be too vague. (*France v. Lucy*, R. & M. 341; *Jones v. Edwards*, McClell. & Y. 139.)

When Notice should be served.—The notice must be served a sufficient time before the period required for its production to enable the party to produce it. What is a sufficient length of time will depend upon circumstances. When the commission day was the 15th of the month, and the prisoner, who was in gaol on a charge of arson, was on the 18th served with notice to produce his policy of insurance, his residence being ten miles from the assize town, such notice was, at the trial which came on upon the 20th, held to be too late. Where the party is in custody, or does not reside

in the assize town, the notice should in general be served before the first day of the sessions: (*R. v. Elliscombe*, 5 C. & P. 522; *Byrne v. Harvey*, 2 Moo. & R. 89; *Firkins v. Edwards*, 9 C. & P. 478.)

Certificate of previous conviction.—If the prisoner has been previously convicted of felony, or has been twice summarily convicted as pointed out in the 12 Vict. c. 11, s. 3, or has been convicted under the Larceny Summary Jurisdiction Act (18 & 19 Vict. c. 126), and it is thought desirable and proper to charge him as having been so previously convicted, application must be made to the proper officer for certificates of such previous convictions. To do this, inquiries should be instituted of those who are likely to know the facts, such as the constables of the locality, the gaoler or clerk to the magistrates, and having ascertained the fact that the party has been so previously convicted, the formal certificates of the convictions should be procured from the proper officers. If the former conviction were at the assizes, the certificate, on application, will be granted by the clerk of assize of the circuit upon payment of his proper fee: if at the sessions, it will be granted in like manner, by the clerk of the peace. If, however, the party is charged with having committed a felony after two summary convictions as before mentioned, or has been convicted under the 18 & 19 Vict. c. 126, then copies of such convictions, certified by the proper officer (that is, the clerk of the peace), must be obtained. In addition to this, it will be necessary to procure the evidence of some witness who can speak to the fact of the prisoner being the same person as he who is mentioned in the certificate. This witness is usually the gaoler or one of the turnkeys, in whose custody he happened to be on the former conviction.

Preparation of the Brief for Counsel.—If it is intended to have at the trial the assistance of counsel it will be necessary to prepare a brief or briefs.

As regards the allowance of counsel's fee, there is no universal rule, each county having its own peculiar rules upon the subject; for whilst in some, a brief and fee to counsel and attorney are allowed in every case, in others, no such allowance is granted; whilst in many, they are allowed only in cases in which the prisoner is defended by counsel, or the witnesses, &c. are numerous, or the committing magistrate certifies upon the back of the depositions, that in his opinion it is a fit case to be prosecuted by counsel. The prosecutor, therefore, will determine for himself as to whether or not he will have his case conducted in court by counsel; in some cases the costs will fall entirely upon himself, in others, it will be allowed in his expenses; but, whether he has to bear the charge himself or not, he will probably often feel that he ought to avail himself of all those aids which the usage and the course of practice place at his disposal to punish crime and defeat dishonesty.

The brief should, in the first place, state the title of the court, then the names of the prosecutor and prisoner &c. in the following form :—

<i>Somerset Midsummer</i>	{	The Queen on the prosecution of John Smith
<i>Sessions, 1858.</i>		against William Stiles.
For the prosecution:		For felony.
The Indictment states—		
<i>(here give the substance of the indictment.)</i>		

CASE.

[Here give a narrative of the entire case, with such observations on the facts as may elucidate the subject; at the same time, if any points of law are likely to arise, referring to any decided cases which may be of service.]

PROOFS.

[These should in the first instance consist of a copy of the depositions as taken before the committing

magistrate, stating the day on which they were taken; when these are finished any additional evidence should be stated.]

The brief, when finished, should be folded lengthwise, and indorsed with the name of the case, the name of counsel, with the fee—stating that it is *For the Prosecution*—and subscribed with the name of the attorney, with his place of lodging at the sessions town.

*Witnesses to prove Death or Illness of Witnesses.]—*As, in the event of any of the witnesses, whose depositions have been taken by the committing magistrate, dying or being so ill as not to be able to travel, their depositions may, under section 17 of the 11 & 12 Vict. c. 42, be read in evidence upon the trial, it will be necessary, in case of either of those contingencies occurring, to be prepared with evidence of the fact as it may be, either that the witness is actually dead, or that he is too ill to travel, and in proof of the latter circumstance, the evidence must be of some person who really *knows* the witness to be too ill to travel: (see *post*.)

In the event of there being any witnesses, whose depositions have not been taken by the committing magistrate, it is always considered to be fair practice, and disarms any adverse observations, to give the prisoner, before trial, a copy of the additional evidence.

Preparations for trial on the part of the Defendant.]—For the prisoner who intends at the trial to plead not guilty, and resist the charge, it is of all importance that early steps should be taken to prepare his defence. If he be on bail, his wisest course will be to place himself in the hands of an attorney; if, however, he be in custody, professional assistance is not very easily obtainable. Upon this subject, it may be well to refer to the existing prison rules as sanctioned by the Secretary of State under the authority of the 5 & 6 Vict. c. 38.

Prison rules as to the Correspondence of Prisoners committed for trial.—By rule 86, the governor of the gaol is to allow all prisoners committed for examination, or for trial, to send and receive letters, unless a visiting or committing magistrate shall have issued an order to the contrary, or unless he shall know a sufficient cause why any such letter should not be sent or received, in which latter case he is to record the fact in his journal; and by the 87th rule, he is to inspect every letter to or from a prisoner under charge or conviction of any crime, except such letters as are addressed to a visiting justice or other proper authority, and in every case where he withholds a letter, he is to record the fact in his journal, and without delay lay such letter before a visiting justice for his decision.

As to Prisoners seeing their friends and relatives.—By rule 80, prisoners committed for trial are to be allowed to see their friends and relations at reasonable hours, twice a week, without any order, or oftener by an order in writing from a visiting or committing magistrate,—unless a visiting or committing magistrate shall have issued an order to the contrary, or unless the governor shall know any sufficient cause why any person should not be admitted; in which latter case the name of the applicant, together with the name of the prisoner whom he applied to visit, and the date of the refusal shall be entered in his journal.

As to Interviews between Prisoners and their Attorneys.—By rule 78, the governor is to allow prisoners committed for examination or for trial, to see their legal advisers at all reasonable times, and in private if required, unless a committing or visiting magistrate shall have issued an order to the contrary; or unless he shall know any sufficient cause why such legal adviser should not be admitted; in which latter case the name of the applicant, together with the name of the prisoner whom he applied to visit, shall be entered in his journal. But any person claiming ad-

mission as a legal adviser must be a certificated attorney or solicitor, or his authorized clerk; and by rule 87, it is provided that prisoners under examination or committed for trial are to be allowed to deliver *personally* to their legal advisers (such being certified attorneys), or their authorized clerks, any confidential written communications prepared as instruction for their defence without being previously examined by any officer of the prison; but all such written communications *not personally* delivered to the legal adviser or his clerk, are to be considered as letters, and are not to be sent out of the prison without being previously inspected by the governor.

Subject to the limited restrictions imposed by the foregoing rules, the prisoner who is committed for trial has the power of communicating with any professional adviser he may think fit. In practice no obstructions are offered to all reasonable intercourse between a prisoner and his attorney, the great practical difficulties being those alone which necessarily spring out of his peculiar position.

Copies of Depositions.]—It has before been shown (*ante*, p. 190) that, under the 11 & 12 Vict. c. 42, s. 27, the defendant is entitled to a copy of the depositions upon which he has been committed, upon payment of a certain sum per folio, and this at any time before the first day of the sessions. The first proper step, therefore, to be taken, will be that of applying to the magistrates' clerk, before whom the examinations were taken for a copy of them, which will be supplied as the act directs.

Obtaining Subpœnas and the Writ of Habeas corpus.]—The same remarks upon the subject of obtaining subpœnas or a *habeas corpus* for witnesses for the prosecution, apply to obtaining them for a defendant, with this additional remark, that it would probably be held that such witnesses are not bound to attend unless their reasonable expenses are first tendered.

Preparations of Brief for Counsel.—In preparing the brief for the defendant, the same general rules will be adopted as those laid down with reference to the brief for the prosecution. The brief, however, for the defendant should vary in the following particulars:—After the usual heading, and the statement that it is for the prisoner, or which of them, if there be several, and it be not for all, it should give at once a full copy of the depositions. Then the case of the defendant should be stated, with all such remarks as to the witnesses for the prosecution, and any peculiar difficulties of fact or law as may suggest themselves. Then should be set out the full proofs of the witnesses for the defence as may be intended to be adduced, carefully noting any peculiarity connected with any of them, as may be useful or important for counsel to know. It is desirable also, in addition to the brief itself, to accompany it with a detached copy of the depositions; such a copy being most convenient for reference in the progress of the case, and saving much trouble and inconvenience which, otherwise, is sometimes experienced in turning over the sheets of the brief itself to ascertain what the witnesses have sworn before the committing magistrate.

Notice to produce.—If the defendant will require for his defence at the trial the production of any document in the possession of the prosecutor, it will be necessary for him to cause a notice to produce to be served: (see *ante*, p. 230.)

Importance of being ready at the commencement of the Sessions.—As it is quite in the discretion of the prosecutor at what time during the sessions, before the grand jury are discharged, he will prefer his bill of indictment, and as the case may be taken at once on the finding of such bill, the importance to the defendant of being ready with his witnesses, and in a position to take his trial at the earliest moment at which the court sits for the trial of prisoners, is too obvious to need being enforced.

CHAPTER XX.

THE PREFERRING OF THE BILL OF INDICTMENT, AND
MATTERS PRELIMINARY TO THE TRIAL.

Preparation of the Bill of Indictment.—As soon as the grand jury are charged the prosecutor may take his bill of indictment before them. If the offence is of an ordinary character, and he has not already had the indictment drawn by counsel, his first proceeding will be to go to the clerk of indictments and there give instructions for his bill. The clerk of indictments is an officer representing the clerk of the peace, and usually attends in some office in the building where the sessions themselves are held. Upon stating to him the charge against the prisoner, the precise nature of which he will gather from the depositions returned to the sessions, he will prepare the indictment, which is always engrossed upon parchment lengthways. The names of all the witnesses will be indorsed on the back, and the indictment itself will be signed at its foot by the clerk of the peace.

Presenting the Bill to the Grand Jury.—The witnesses will then be taken by the prosecutor before the grand jury, together with the bill of indictment, which he will lay before the foreman. They will then be sworn and examined one by one upon the charge, as directed by the 19 & 20 Vict. c. 54, s. 1, the foreman being required to write his initials against the name of each witness so sworn and examined. It may here be observed that as the grand jury have not the depositions before them, and know nothing of the case, except as they see it stated in the indictment, difficulties often arise in unravelling the true facts. It is

not therefore unfrequent, with the consent of the jury, and there is no legal objection whatever to the practice, for the attorney of the prosecutor or the prosecutor himself to examine the witnesses. Indeed, bills of indictment are often thrown out from the facts of the case not being properly elicited from the witnesses. It may be remarked, that no one on the part of the prisoner has any right or ought to be present, and that the grand jury themselves may exclude from their room every one, except the witness actually under examination.

The finding of the Grand Jury.]—Upon the conclusion of the whole evidence, the grand jury decide upon whether or not they will find the bill. To justify their finding it a majority of their body must give this course their sanction, and that majority must consist of twelve at least. If they agree to find it, the chairman indorses it with the words, "*A true bill*," and signs his name. If, however, they agree to ignore it, the indorsement is in the same way, but with the words "*No bill*."

Proceedings upon the finding of the Bill.]—Having given their evidence the prosecutor and witnesses will retire from the grand jury room and be in attendance upon the court until the case in its turn comes on for trial.

The grand jury having disposed of the bill will take it into court and there deliver it to the clerk of the peace who thereupon in their presence, in open court, will announce their finding.

Proceedings if Defendant is not in custody.]—If the prisoner be neither in custody nor upon bail, the course to be pursued in order to apprehend him has before been pointed out: (*ante*, pp. 194, 195.)

Motions to postpone Trial, &c.]—The indictment being now ripe for trial each party should hold himself

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in readiness. If either the prosecutor or the defendant has any application to make with the view of postponing the case, the present is the proper time for making it; or if the prisoner desires the court to order a sum of money taken from him upon his apprehension, to be restored to him for the purposes of his defence, it will be right for his attorney or counsel now to apply for it. Upon all such matters the court will deal with the application as they think right. If the application is to postpone the trial, they may do so by respiteing the recognizances of the prosecutor and witnesses to the next sessions or the next assizes if these should intervene, admitting the prisoner to bail in the mean time if they think fit.

Surrender of Defendant if on Bail.]—Upon the bill being found, the defendant, if out upon bail, will be called upon to surrender; this he should do by delivering himself into the custody of the gaoler, whereupon his bail become absolved from all further liability.

Order of proceedings upon Bill being found.]—The order in which the court proceeds with the criminal business is quite in its own discretion. It is not unusual, however, as there is some formal difference in the mode of proceeding, to dispose of the felonies before dealing with the misdemeanors. If several bills for felonies have been returned at the same time by the grand jury, the whole of the prisoners against whom they have been found are usually at once placed and arraigned in the dock. In cases of felony the prisoner *must* be placed in the dock: (*Reg. v. Zulueta*, 1 Car. & Kir. 215; *Reg. v. Douglas*, Car. & Mar. 193; *Reg. v. St. George*, 9 C. & P. 489); and although in misdemeanors it is usual for him to be placed there, he may, with the consent of the court, be permitted to sit at the table by his legal advisers; and, indeed, in such a class of cases after he has pleaded, by consent he may be tried in his absence.

The Arraignment.]—The indictment being ripe for trial and the prisoner in custody, the first proceeding is the arraignment. This consists in reading the indictment to the prisoner and taking his plea. The clerk of the peace calls upon the prisoner by name, and upon his answering he reads to him the substance of the indictment and asks him if he pleads “guilty” or “not guilty.” If he pleads “guilty,” his plea is recorded, and the chairman, after having informed himself from the depositions of the nature of the offence, or in addition, having inquired of the witnesses present, proceeds to pass sentence. If, however, the prisoner pleads “not guilty,” his plea is in like manner recorded, and the trial will proceed in the way hereafter pointed out.

Caution in taking a Plea of “Guilty.”]—In cases in which the prisoner pleads “guilty,” it is desirable that the court should take especial care that he is made clearly to understand the exact legal meaning and effect of the charge. Knowing, as we do, that charges apparently of great magnitude upon the face of the indictment often, when sifted upon the examination of witnesses, resolve themselves into offences of a very minor character, and that legal crimes are frequently made up of nice particulars, the distinctions in fact between criminal wrongs and civil injuries being sometimes of a very refined description, it is always most satisfactory that a prisoner should be condemned only upon the full proof of his guilt deduced from the evidence independent of his own admission. In the very common offences of receiving stolen property and embezzlement, a prisoner is likely to misunderstand the grounds upon which his guilt is legally held to rest; in the former he may too readily imagine that it depends upon the simple fact of his having possession of property which another person has stolen; and in the latter, upon that of his having misapplied or not applied the property of another. To guard against any misconceptions upon the subject, great care should be taken that upon a

prisoner's pleading "guilty," he is made fully to understand the legal qualities of the offence charged.

The plea of "Not Guilty."]—The plea of "not guilty" puts the prosecutor to the proof of every fact necessary to sustain the charge.

The Pleas of Autrefois acquit, Autrefois convict, or Pardon.]—If the prisoner has before been convicted or acquitted for the same offence, or has received a pardon, these facts should be made the subject of a special plea. If he has before been tried and acquitted, his plea will be "*autrefois acquit*"; if before convicted, it will be "*autrefois convict*"; or if he has been convicted and pardoned, he will plead his pardon; and upon these pleas, if traversed by the prosecutor, the jury will be impanelled. As such pleas, however, are exceedingly rare, it will be unnecessary further to consider them, and it will be sufficient to refer for additional information upon the subject to "Archbold's Criminal Pleading."

Impanelling the jury — Challenges.]—Upon the prisoner's pleading "not guilty," the jury will be impanelled and sworn, the accused being first told by the clerk of the peace, that if he intends to challenge any of them he must do so as they come to the book to be sworn, and before they are sworn. Upon the subject of the right generally to challenge, the reader is referred to Dickinson's Quarter Sessions, p. 482; Burn's Justice, title "Jurors."

In practice it is usual, when the prisoner has the assistance of an attorney, and there is any objection to any one of the jury about to be impanelled, for an intimation to be given to the clerk of the peace, who, thereupon, will substitute some other juror. By this course the same object is attained as by an open challenge, and by means less open to public remark.

Ordering Witnesses out of Court.]—Before the case is opened an application is sometimes made that the

witnesses for the prosecution be ordered out of court, there to remain until they are required to give their evidence. When such an application is made, it is seldom, if ever refused. The order is usually at the same time given for the remaining out of court of the witnesses also for the prisoner, excepting only those who speak merely as to character : (see as to this, *ante*, p. 54.)

CHAPTER XXI.

THE TRIAL.

The opening of the case to the Jury.—All preliminaries being arranged, the prosecutor will have to prove his indictment. If the prosecution is conducted by counsel, he will have a right to open the case by an address to the jury. In very simple charges, and where no difficulty of any kind in the course of the proceeding is likely to arise, it is not usual for counsel thus to open the case. This, however, being a matter entirely in his own discretion, nothing further need be said upon the subject.

When no counsel is engaged for the prosecution, there is no opening speech to the jury allowed, the prosecutor himself never being permitted to address them, nor even to examine the witnesses. If, therefore, the prosecution is not conducted by counsel, the trial will be commenced by the calling of the witnesses.

The calling of the Witnesses.—The witnesses will be called and sworn in the order most conducive to the eliciting of the truth. The prosecutor is not, however, bound to produce all the witnesses whose depositions were taken before the committing magistrate, nor all who have gone before the grand jury, and he may support his case by the evidence of other witnesses in addition to those who are bound over by the justices. Where, however, there is such additional evidence, it is always considered to be fair practice to permit the prisoner's attorney or counsel to see or have a copy of it.

What has before been said upon the subject of witnesses and evidence (*ante*, pages 56 to 60) is applicable here.

Examination and Cross-examination.—As the examination-in-chief of each witness is concluded, the prisoner, or his counsel, will have a right to cross-examine him. The cross-examination concluded, he may be re-examined as to any facts elicited in such cross-examination.

Putting in evidence the Depositions of dead or sick Witnesses.—It will often occur that after the depositions are taken by the committing magistrate, and the time of the occurring of the sessions, some one of the witnesses will have died, or become so ill as to be unable to travel to the place of trial. For either contingency the 11 & 12 Vict. c. 42, has made provision. By sect. 17, after directing the manner in which the examining justice is to take the depositions, it is enacted that—

If upon the trial of the person so accused as first aforesaid, it shall be proved by the oath or affirmation of any credible witness, that any person whose deposition shall have been taken as aforesaid, is dead or so ill as not to be able to travel, and if also it be found that such deposition was taken in the presence of the person so accused, and that he or his counsel or attorney had a full opportunity of cross-examining the witness, then, if such deposition purport to be signed by the justice by or before whom the same purports to have been taken, it shall be lawful to read such deposition as evidence in such prosecution without further proof thereof, unless it shall be proved that such deposition was not in fact signed by the justice purporting to sign the same.

When, therefore, the witness is either dead or too ill to travel, it will be necessary, in order to read his deposition in evidence, to prove, 1st, the fact of his death, which may be proved by any one who knows the fact; or of his being too ill to travel, which must be proved by some one who is actually aware, from personal knowledge, of his illness;

2nd, that the deposition was taken in the prisoner's presence and that he had an opportunity of cross-examining, which can best be proved by the magistrates' clerk, but may be proved by any one who was present, and knows the facts; 3rd, that the deposition purports to be signed by the justice by whom it was taken. The proof being thus given, the deposition may be put in and read, subject, of course, to any objection to any part of it as not being receivable as legal evidence.

Objecting that there is no evidence for the Jury.—When the case on the part of the prosecution is closed, it will be competent to the prisoner or his counsel to object that no *primâ facie* case has been proved, and, therefore, that there is nothing for the jury. If the Bench wish to hear the counsel for the prosecution upon the objection, the leading counsel will state upon what evidence he relies as proving the charge contained in the indictment; and the prisoner or his counsel will be heard in reply. If the Bench think that there is no evidence for the jury, they at once direct them to return a verdict of "not guilty." If, however, they are of a contrary opinion, the case proceeds.

Address to the Jury by the Prisoner or his Counsel.—The prisoner has now a right to address the jury in his defence, and, in so doing, he may say anything that is relevant to the case, though he is in no situation to prove it; and it has been well observed that "where a party accused is obliged to defend himself, any statement which he may make ought to be the more attentively heard, and though not made upon oath or supported by proof, still, if it offers a reasonable explanation of the circumstances which seem to bear against him, should be carefully weighed and candidly estimated by a jury:" (Dick. Quarter Sessions, 557.)

If the prisoner is defended by counsel, the latter will be the party to address the jury, as to whose duties or discretion it is unnecessary here to speak. It may, however, be observed, that cases have occurred in

which the courts have permitted *both* the accused and his counsel to address the jury ; the first, for the purpose of drawing their attention to facts within his own knowledge or provable by himself alone ; the second, for that of commenting upon those facts and the case at large. It is obvious that, without giving a prisoner in certain cases this privilege, the fact of his being defended by counsel, would be likely to prove very prejudicial to him, by shutting out from the jury a knowledge of those circumstances which he alone is enabled to convey to them. Hence learned judges have occasionally permitted the adoption of the course adverted to. In *Reg. v. Malings* (8 C. & P. 242), in which the prisoner was indicted for shooting with intent to do grievous bodily harm, there having been no person present at the time of the offence but the prosecutor and the prisoner, the latter was, under these special circumstances, allowed to make a statement before his counsel addressed the jury. Mr. Baron Alderson remarked—

I see no objection to his doing so, I have read the statement he made before the magistrates. I think it is right that a person should have an opportunity of stating such facts as he may think material, and that his counsel should be allowed to comment on that statement as one of the circumstances of the case. On trials of high treason, the prisoner is always allowed to make his own statement after his counsel has addressed the jury. It is true that the prisoner's statement may often defeat the defence intended by his counsel, but if so the ends of justice will be furthered. Besides, it is often the genuine defence of the party, and not a mere imaginary case invented by the ingenuity of counsel.

In that case the prisoner made his statement, and his counsel afterwards addressed the jury : (see also *Reg. v. Walkling*, 8 C. & P. 243 ; *Reg. v. Dyer*, 1 Cox C. C. 113 ; *Reg. v. Burrows*, 1 Cox C. C. 363.)

The fairness of permitting a prisoner thus to make a statement before his counsel addresses the jury, is apparent when it is seen in how many cases legal guilt is sustained only by a presumption of law arising out

of facts capable of explanation alone by the prisoner himself, as in the case of the recent possession of stolen property. It may be answered that such explanation may be put hypothetically by the prisoner's counsel ; but a mere hypothesis, and that too from an advocate, falls very far short of a positive assertion from the mouth of the accused himself. It will be obvious that this course of proceeding will be resorted to in few cases, in fact in those alone in which the law draws an inference capable of being rebutted by a further explanation of facts.

As to whether or not the counsel for the prosecution is entitled to a reply under such circumstances, has never been decided ; in the cases already reported no reply has taken place, though it does not appear that it was ever claimed. Clearly, if a prisoner defends himself without the aid of counsel, and states facts, no such reply is allowed. Though where counsel himself in his address for a prisoner, states facts, it has been held to be in the discretion of the court to permit a reply : (*Naish v. Brown*, 2 Car. & Kir. 219.) How the case differs because the prisoner himself states facts afterwards commented on by his counsel is not very clear.

The calling of Witnesses for the Prisoner.—If the prisoner intends to call witnesses, he will now do so in such order as he or his counsel thinks proper ; the same rules being applicable to his evidence as to that of the prosecutor. Upon the conclusion of his case, the prosecutor may produce evidence in reply, whereupon the prisoner or his counsel will have a right to reply upon such evidence, and the counsel for the prosecution will have a general reply upon the whole case.

It rarely occurs that the prosecutor adduces any evidence in reply upon that of the prisoner ; and if the prisoner produces no evidence in answer to the charge, the counsel for the prosecution has no right of reply, nor is any reply ever claimed where the prisoner adduces evidence merely to his character ; for, although

in strict law the right to a reply exists in such a case, yet, by a common understanding, and the universal practice in the profession, such a right is never exercised. In cases, however, where the prisoner is by the indictment charged with having been previously convicted, and, notwithstanding this, he calls witnesses to his character, or by cross-examination of the witnesses for the prosecution he elicits evidence to his character (*Reg. v. Shrimpton*, 2 Den. C. C. 319), the prosecutor has a right in answer to such evidence to put in the evidence of the previous conviction : (6 & 7 Will. 4, c. 111.)

*The Summing up.*¹—Upon the evidence upon both sides being concluded, the chairman will sum up the case to the jury ; and here it will behove the respective counsel for the prosecution and the prisoner to be exceedingly watchful. In criminal cases tried at the sessions, there can be no new trial, and any error therefore of fact or law on the part of the chairman in leaving the case to the jury, may be without means of correction unless corrected at the moment. If, therefore, the chairman, in summing up the case to the jury, should fall into error, either as regards the evidence or the law of the case, his attention should at once be drawn to the circumstance, lest a verdict should be returned tainted with the error which has thus been allowed to pass uncorrected.

The Verdict "Not Guilty"—Application for the Prisoner's discharge.—The jury having considered the case, return a verdict by the mouth of their foreman either of "guilty" or "not guilty." If the latter verdict is the one returned, it is usual for the court on application, if they are given to understand that there is no further charge against the prisoner, or the grand jury are discharged, to order the prisoner to be forthwith set at liberty, though it is quite competent to them to decline making any such order, the effect of their so declining being to keep the prisoner in custody

until the end of the sessions, a course of proceeding, however, which is at variance with every principle of justice and fair dealing. When a prisoner is acquitted, he ought to have all the advantages due to an innocent man ; and when it is remembered that the sole object of imprisonment before trial is that of securing the bodily presence of the accused at his trial, an object which has in such a case as that to which attention is now drawn been accomplished, and moreover, that the only legal ground upon which a party can be so detained is founded merely upon the fiction that the sessions in the eye of the law last but one day,—a fiction which, contrary to the maxim of our law upon the subject of fictions in general, is thus turned to a man's prejudice—the injustice if not the cruelty of unnecessarily detaining him in custody is strikingly apparent.

Verdict of "Guilty"—Proof of previous Conviction.]
—If the jury return a verdict of "guilty" then, if the indictment contains a charge of a previous conviction, it will be the duty of the prosecutor to proceed with the evidence of such previous conviction. It may, however, be observed, that there is no rule which imperatively requires such proof to be given, and many cases will constantly arise in which, with the permission of the court, evidence of the previous conviction should not be produced. If, however, it is intended to put in such conviction, then the clerk of the peace informs the jury that the indictment contains also the charge that the prisoner has been previously convicted of felony. He then reads the certificate which has been attached to the indictment, and a witness is called to prove that the prisoner is the same person as the person mentioned in such certificate. Of course it is open to the prisoner to deny this fact, though it will very seldom occur that he is in a situation to do so. The jury will then be asked whether or not they are satisfied that the prisoner is the same person ? Upon which they reply either in the affirmative or negative.

Calling upon the Prisoner before Sentence.—Upon this, the prisoner will be asked if he has anything to say why sentence should not be passed upon him? This is the proper time to take any objection in arrest of judgment. As regards the *facts* of the case, no objection can now be urged; the right to object being confined alone to questions of law.

Reservation of a case for the Court above.—If the Bench are impressed with the force of any legal objection going to the legal merits of the case, whether urged at a prior stage of the proceedings, or at this period, they will probably act upon the powers conferred upon them by the 11 & 12 Vict. c. 76, and reserve a case for the opinion of the court for the consideration of Crown Cases Reserved (of which, together with the reservation generally of cases for the court above, mention will hereafter be made.) Their power, however, extends only to the reservation of some question of *law*, and if they decide upon such a reservation, they have power either to respite the execution of their judgment, or to postpone their judgment until the question reserved shall have been considered and decided; and in either case they may, in their discretion, either commit the prisoner to prison, or take recognizance of bail with one or two sureties, and in such sum as they shall think fit, conditioned for his appearance at such time or times as the court shall direct, to receive judgment or to render himself in execution: (see this subject, *post*.)

The Sentence.—With reference to the sentence to be passed, nothing need be said in this place; the Legislature has vested in the presiding judge a very wide discretion upon the subject of punishment, with the view of meeting any possible variety of case.

The Costs of the Prosecution.—The case concluded, the prosecutor will apply to the clerk of the peace for a certificate of his expenses. Upon such application he

should produce the certificate received by him from the committing justice. As to the subject of costs generally, reference may here be made to what has already been said at page 191.

The mode by which the expenses are obtained is by application to the clerk of the peace, who, under the authority of the 7 Geo. 4, c. 64, s. 24, is required to make out an order for payment. This order is framed in accordance with the scale of costs in force for the county, and when made out is delivered to the prosecutor, who, upon production of it to the county treasurer at his office, which, during the sessions, is always located in or near the court-house itself, will have the amount paid to him.

In some statutes special provisions are enacted with reference to costs. Thus, under the General Highway Act, 5 & 6 Will. 4, c. 50, the costs are to be paid out of the highway-rate levied on the parish in which the highway is situate. So also, under the 25 Geo. 2, c. 36, s. 5, regulating the prosecution of disorderly houses, the costs of the prosecution are to be paid by the overseers of the poor.

Rewards for apprehending certain offenders.—By the 14 & 15 Vict. c. 55, s. 8, the Court of Quarter Sessions are enabled to order compensation, not exceeding five pounds, to be paid to any person who appears to have been active in or towards the apprehension of any party charged with any of the offences mentioned in the 7 Geo. 4, c. 64, as are within the jurisdiction of the sessions.

Order for the restoration of Property.—When the prosecution has had reference to the larceny of goods or their possession by false pretences, &c., the court has power upon conviction to order their restoration to the owner. By sect. 57 of the 7 & 8 Geo. 4, c. 29, it is enacted—

That if any person guilty of any such felony or misdemeanor as aforesaid in stealing, taking, obtaining (*viz.*, by false pretences, sect. 53), or con-

verting, or in knowingly receiving any chattel, money, valuable security, or other property whatever, shall be indicted for any such offence, by or on behalf of the owner of the property, or his executor or administrator, and convicted thereof, in such case the property shall be restored to the owner or his representative; and the court before whom any such person shall be so convicted, shall have power to award from time to time writs of restitution for the said property, or to order the restitution thereof in a summary manner: provided always, that if it shall appear before any award or order made, that any valuable security shall have been *bonâ fide* paid or discharged by some person or body corporate liable to the payment thereof, or being a negotiable instrument, shall have been *bonâ fide* taken or received by transfer or delivery, by some person or body corporate for a just or valuable consideration, without any notice, or without any reasonable cause to suspect that the same had by any felony or misdemeanor been stolen, taken, obtained, or converted as aforesaid, the court in such case shall not award or order the restitution of such security.

Power to order an indictment for Perjury.—By the 14 & 15 Vict. c. 100, s. 19, power is given to the chairman at quarter sessions to order any person guilty of perjury before him to be prosecuted. The section is as follows:—

That it shall and may be lawful for the judges or judge of any of the superior courts of common law or equity, or for Her Majesty's justices or commissioners of assize, nisi prius, oyer and terminer, or gaol delivery, or for any justices of the peace, recorder, or deputy recorder, chairman, or other judge, holding any general or quarter sessions of the peace, or for any commissioner of bankruptcy or insolvency, or for any judge or deputy judge of any County Court, or any court of record, or for any justices of the peace in special or petty sessions, or for any sheriff or his lawful deputy before whom any writ of inquiry, or writ of trial from any of the superior courts shall be executed, in case it shall appear to him or them that any person has been guilty of wilful and corrupt perjury, in any evidence given, or in any affidavit, deposition, examination, answer, or other proceeding made or taken before him or them, to direct such person to be prosecuted for such perjury, in case there shall appear to him or them a reasonable cause for such prosecution, and to commit such person so directed to be prosecuted until the

next session of oyer and terminer or gaol delivery of the county or other district, within which such perjury was committed, unless such person shall enter into a recognizance with one or more sufficient surety or sureties, conditioned for the appearance of such person at such next session of oyer and terminer or gaol delivery, and that he will then surrender and take his trial, and not depart the court without leave; and to require any person he or they may think fit to enter into a recognizance conditioned to prosecute or give evidence against such person so directed to be prosecuted as aforesaid, and to give to the party so bound to prosecute a certificate of the same being directed, which certificate shall be given without any fee or charge, and shall be sufficient proof of such prosecution having been directed as aforesaid; and upon the production thereof, the costs of such prosecution shall and are hereby required to be allowed by the court before which any person shall be prosecuted or tried in pursuance of such direction as aforesaid, unless such last mentioned court shall specially otherwise direct; and when allowed by any such court in Ireland, such sum as shall be so allowed shall be ordered by the said court to be paid to the prosecutor by the treasurer of the county in which such offence shall be alleged to have been committed, and the same shall be presented for, raised and levied in the same manner as the expenses of prosecutions for felonies are now presented for, raised and levied in Ireland: provided always, that no such direction or certificate shall be given in evidence upon any trial to be had against any person upon a prosecution so directed as aforesaid.

CHAPTER XXII.

THE CIVIL PRACTICE OF THE SESSIONS—OF MATTERS
PRELIMINARY TO THE TRIAL—NOTICE OF APPEAL—
RECOGNIZANCES, &c.

THE civil business of the Quarter Sessions in counties in which (as before has been shown) the court is divided, is usually entirely transacted in one of such divisions, whilst the criminal business is going on in the other.

General Business of the Civil Court.]—The matters transacted are of various kinds, such as the hearing of motions upon different subjects, the trial of appeals against the convictions or orders of justices, and generally (as partaking of a civil character) the trial of indictments for the non-repair of highways.

Unopposed Motions.]—On the assembling of the court, it is usual, in the first instance, for the chairman to call upon each barrister, according to his seniority, to make any motion which is either *ex parte* or unopposed. Such motions will have reference to the entering and respiting of appeals, applications under various statutes for licenses, the stopping up or diverting of highways, &c. Upon these matters the different statutes and the rules of the sessions relative to the matter will be a sufficient, and indeed the only, guide for the practitioner.

These subjects disposed of, the court usually proceeds with the hearing of such appeals as have been duly entered for trial.

Before proceeding with the description of the practice of the quarter sessions upon this branch of the subject, it will be convenient to consider the subject of the right generally to appeal, and the circumstances and conditions under which the right can be exercised.

The right to Appeal.—When a party has been convicted, or an order has been made against him by a justice or justices, he may or may not have a right of appealing against the decision to the Court of Quarter Sessions according to circumstances.

When the right to Appeal exists.—The power of appealing is not of *general* but of *particular* right, and exists in those cases only in which it is specially given: (*Rex v. Hanson*, 4 B. & Ald. 519.) Where therefore it is not conferred by express words, nothing can be intended in its favour (*Rex v. Skone*, 6 East, 514; *Reg. v. Stock*, 8 A. & Ell. 405), in which latter case Lord Denman observed:—"The reason why a power of appeal ought not to be implied is, that the appeal brings a new set of parties into action, and it is necessary that the persons to be affected, and the machinery to be employed should be distinctly pointed out:" (*Reg. v. The Recorder of Bath*, 9 A. & Ell. 871; *Rex v. The Recorder of Ipswich*, 8 Dowl. 103; *Reg. v. The Justices of Lancashire*, 30 L. T. Rep. 149.) So, on the other hand, if an express power of appeal is given, it cannot be taken away by mere inference deduced from other clauses in the same act: (*Rex v. The Justices of Hants*, 1 B. & Ad. 664, per Lord Tenterden; *Rex v. The Justices of Salop*, 2 B. & Ad. 145; *Rex v. The Justices of Cumberland*, 1 B. & C. 64.)

Conditions of appealing.—In most cases, when an appeal is given, conditions are imposed upon the party intending to avail himself of it, with which it is imperatively necessary he should comply. These conditions have occasionally reference to the time within which the notice of appeal shall be given, for what

sessions to be given, the form of notice, the parties to whom it is to be given, and the entering into a recognizance upon the subject.

The time for appealing.—As regards the *time* within which notice of appeal is to be given,—nothing can be more uncertain than the statutable requirements upon this point, there existing every variety of notice required from a period of some weeks, down to its being given *immediately*. Upon this subject, as upon all others connected with the practice of appealing, careful reference should in each case be made to the statute; and this, before the hearing of the case at the petty sessions, to the end that should the notice of appeal be required to be given *immediately*, or within some other very limited period, the practitioner may be prepared at once to give it.

When Notice to be given immediately.—When the statute requires the notice to be given "*immediately*," it should be given at once (*Page v. Pearce*, 8 M. & W. 677; *Grace v. Clinch*, 4 Q. B. 606), though a latitude of construction has been put upon this word, which gives it an extensive operation, and it would seem that the proper construction is that of *promptly and expeditiously under the circumstances of the case*: (*Reg. v. Aston*, 19 L. J. 236, M. C.; 14 Jur. 1045; see also *Ex parte Blues*, 24 L. J. 138, M. C.) As to words "as soon as possible," see *Attwood v. Emery* (26 L. J. 73, C. P.)

When to be given, so many days "at least."—If so many days "*at least*" are required, such days must be *clear days*: (*Reg. v. The Justices of Middlesex*, 14 L. J. 139, M. C.; *Zouch v. Empsey*, 4 B. & Ald. 522.)

When to be given within so many hours.—The Legislature sometimes requires that the notice of appeal shall be given within so many hours after the adjudica-

tion; and under the 7 & 8 Vict. c. 101, s. 4 (Bastardy), the notice is to be given within twenty-four hours after the adjudication and making of the order under this statute; however, it was held in *Reg. v. The Justices of Middlesex* (17 L. J. 111, M. C.), that the Sunday is to be excluded; and, therefore, where an order was made at five o'clock on Saturday, and the notice of appeal was not served until the following Monday morning, it was held to be in time.

The provisions of the 12 & 13 Vict. c. 45.]—Some slight attempt at uniformity as regards the time for giving notice of appeal has been made by the 12 & 13 Vict. c. 45 (*An Act to amend the Procedure in Courts of General and Quarter Sessions of the Peace in England and Wales, and for the better Advancement of Justice in Cases within the Jurisdiction of those Courts*), which enacts by section the 1st—

That in every case of appeal (except as hereinafter mentioned) to any court of general or quarter sessions of the peace fourteen clear days' notice of appeal at least shall be given, and such shall be sufficient notice, any act or acts, or any rule or practice of any court or courts to the contrary notwithstanding, and such notice of appeal shall be in writing, signed by the person or persons giving the same, or by his, her or their attorney on his, her or their behalf, and the grounds of appeal shall be specified in every such notice: provided always, that it shall not be lawful for the appellant or appellants on the trial of any such appeal to go into or give evidence of any other ground of appeal besides those set forth in such notice.

The exceptions to the rule laid down in the foregoing section are contained in the 2nd section, which enacts—

That none of the provisions hereinbefore contained relating to notices of appeal shall be construed to affect or alter the law as to notice of appeal against a summary conviction, or against an order of removal, or against an order under any statute relating to pauper lunatics, or against an order in bastardy, or against any proceeding under or by virtue of any of the statutes relating to Her Majesty's revenue of excise

or customs, stamps, taxes, or post-office, but the law with regard to notices of all such appeals shall be deemed and taken to be the same as if the provisions hereinbefore contained had not been enacted.

From this it will be seen that the 1st section operates over a very small class of cases. If, however, the subject-matter of the appeal do not come within any of the exceptions contained in the second section, as above set forth, the notice of appeal must be of the length of *fourteen clear days at least*.

Notice of Appeal after Judgment.—When the statute enables a party to give his notice of appeal within a certain time after *judgment* or after *adjudication* or the *making of the order*, the time in general will run from the period when the *judgment*, adjudication or *order is pronounced or made*, and not from that when it is served or executed: (*Rex v. The Justices of Pembrokeshire*, 2 East, 213; *Rex v. The Justices of Staffordshire*, 3 East, 151; *Reg. v. The Justices of Derbyshire*, 7 Q. B. 193.) However, under the 7 & 8 Vict. c. 101 (Bastardy Orders), the 4th section of which requires the notice of appeal to be given within twenty-four hours after the adjudication and making of any order on the putative father, it was held in the case of *Reg. v. The Justices of Flintshire* (15 L. J. 50, M. C.) that if the notice is given within twenty-four hours after the actual signing of the order by the justices, though more than that length of time after the verbal pronouncing of the order it is sufficient. It was held also under this statute, in *Reg. v. The Justices of Huntingdonshire* (19 L. J. 127, M. C.), that a notice of appeal given within twenty-four hours after a verbal adjudication, though before the written formal order is signed by the justices, is nevertheless good.

Rules of Sessions as to Notices of Appeal.—It should be remembered that every Court of Quarter Sessions has power to frame regulations for the convenient transaction of its business, and that amongst these regulations are often found provisions regulating the

length of notice of appeal, which rules, when not in themselves unreasonable or contrary to any statutable provision, have the effect and force of law: (*Reg. v. The Justices of Montgomeryshire*, 14 L. J. 142, M. C.; *Reg. v. The Justices of Warwickshire*, 14 L. J. 39, M. C.; *Reg. v. The Justices of Surrey*, 18 L. J. 175, M. C.)

For what Sessions notice to be given.—As respects the particular sessions for which the notice is to be given, this will be to the sessions of the jurisdiction in which the order or conviction is made, unless it is otherwise specially provided by statute. Thus, an appeal from the decision of county justices will be to the county sessions, and that from the decision of magistrates acting within a borough, having a grant of quarter sessions, to the quarter sessions of such borough. So, where the order is of justices of another county, as in the case of an order of removal of a pauper from justices in the county of B. to a parish in the county of C., the appeal will be to the county sessions of B.; or if the order be of magistrates of a borough in the county of B. which borough has a quarter sessions of its own for the removal of a pauper to a parish in the county of C., the appeal will be to such borough sessions. However, under the 5 & 6 Will. 4, c. 76 (The Municipal Corporations Act) s. 105, the recorder of a borough has no power to grant any license to keep an inn, alehouse, or victualling-house to sell exciseable liquors by retail, therefore an appeal under the 9 Geo. 4, c. 61, against a refusal of borough magistrates to grant an alehouse license, cannot be made to the recorder of such borough at the borough sessions; but, as it should seem, must be made to the county sessions: (*Reg. v. Deane*, 2 Q. B. 96; *Reg. v. The Recorder of Bristol*, 24 L. T. 156.)

When to the "Next Sessions."—When the statute directs that the appeal shall be made to the *next*

sessions, this means the *next practicable sessions*: (*Rex v. The Justices of Kent*, 8 Ad. & Ell. 639; *Rex v. Shackwell and others*, 4 B. & C. 62; *Rex v. Justices of Surrey*, 15 L.^aJ. 1, M. C.; see as to this, Dick. Q. Sess.)

Form of Notice—When Verbal, when in Writing.]—As regards the *form* of the notice of appeal—it may be laid down as a general rule, that unless the Legislature requires it to be in writing, it may be *verbal* only (*Rex v. The Justice of Salop*, 4 B. & Ald. 626; *Reg. v. The Justices of Surrey*, 5 B. & Ald. 539; *Reg. v. The Justices of Huntingdonshire*, 19 L. J. 127, M. C.); but inasmuch as it will be requisite upon the trial of the appeal to be in a situation to prove the actual giving of the notice of appeal, whether verbal or written, it is advisable that it should in every case be in the latter form.

Most modern acts of Parliament require that the notice of appeal shall be in writing, and the contents of such notice are often prescribed by the statute. When such is the case great care must be observed that all the statutable requisites are complied with.

It has been shown, that by the 12 & 13 Vict. c. 45, s. 1, all notices of appeal within the operation of that act are to be in writing, signed by the person or persons giving the same, or by his, her or their attorney on his, her or their behalf, and the grounds of appeal are to be specified in every such notice.

Statement of grounds of Appeal.]—It is often required that the notice of appeal shall state the particular grounds or matters upon which the appellant intends to support his appeal, and when this is the case great care should be taken that the grounds are fully and clearly stated: (*Rex v. The Justices of Oxfordshire*, 1 B. & C. 279; *Rex v. Sheard*, 2 B. & C. 856; *Rex v. The Justices of Westmoreland*, 10 B. & C. 226.) Where, however, the ground of appeal is that the appellant is *not guilty* upon the merits of that of which he is convicted, a general allegation “that he

was not guilty of the said offence" is sufficient : (*Rex v. The Justices of Newcastle-upon-Tyne*, 1 M. & Selw. 411.)

To whom Notice of Appeal to be given.—As to the parties to whom the notice should be given,—this will often be regulated by the statute providing for the notice. The notice, when in writing, should be directed to all the parties described by the particular statute upon the subject, and where there is no description, to such persons as the proceedings point out as the natural respondents, and this by their names and their offices, if they have acted in an official capacity. The *service* of the notice need not be personal unless the statute requires it to be so, but it will be sufficient if it is left at the dwelling-house of the party with his wife, servant, or other member of his household, so that it can reasonably be presumed to have come to his hands: (*Reg. v. The Justices of the North Riding of Yorkshire*, 7 Q. B. 154; 14 L. J. 91, M. C.) Notice should be given to each respondent: (*Rex v. The Justices of Bedfordshire*, 11 Ad. & Ell. 138; see also *Ex parte Blues*, 24 L. J. 138, M. C.)

When it may be given by Attorney, or through the Post.—The notice, unless the statute clearly imports the reverse, may be given by the attorney for the appellant (*Reg. v. The Justices of Middlesex*, 20 L. J. 42, M. C.), and some statutes permit its being sent through the post: (see 12 & 13 Vict. c. 45, *ante*, 258.)

When Appellant to enter into a Recognizance.—Many acts of Parliament require that as a condition of a right to appeal, the party shall enter into a recognizance by himself or one or more surety or sureties, and when this is the case the statutable provision must be strictly complied with. Under the 7 & 8 Vict. c. 101, s. 4, amended by the 8 Vict. c. 10, s. 3, the appellant is required within seven days after the adjudication and making of the order (*Bastardy*), to give sufficient security by recognizance or otherwise for his appear-

ance at the sessions, and for the trial of his appeal thereat and the payment of such costs as he shall be ordered to pay; and he is also "*forthwith*" to give or send a notice in writing (which may be by post) of his having so entered into the recognizance to the woman in whose favour the order is made, and also to one of the justices who made the order, unless such justice is one of those before whom he entered into such recognizance.

However, as these recognizances are the creatures of statutes in particular cases, each enactment will direct the terms to be imposed.

Additional conditions of appealing.—In addition to the foregoing, it not unfrequently occurs that the Legislature imposes peculiar conditions of appealing, and clogs the right with a body of provisions of a highly special description. Thus, upon informations for penalties before justices under the Excise Act, 7 & 8 Geo. 4, c. 53, amended by the 4 & 5 Will. 4, c. 51, it is enacted that if a party is desirous of appealing against the decision of the magistrates he must give notice "*immediately*" after the giving of the judgment, and that too to a variety of parties; and upon the appeal coming on for trial, no witnesses are to be examined except those who were produced before the justices; and even where the decision has been in favour of the defendant without his being required to adduce any evidence, he will not, on the trial of the appeal, be permitted to produce any witnesses unless he has tendered them to the justices, and they shall have taken down their names in writing and have transmitted the same with the information and judgment to the sessions. The existence of such provisions as these warrants the remark that, in every case where it is intended to appeal against an adverse decision, it will be prudent before the hearing to consult carefully the statutable provisions relative to the right to appeal, and to be fully prepared for acting upon the contingency.

The following may be the notice of appeal:—

NOTICE OF APPEAL AGAINST A CONVICTION OR ORDER.

To C. D. of &c., and (the names and additions of the parties to whom the notice of appeal is required to be given.)

Take notice that I, the undersigned A. B. of , do intend to enter and prosecute an appeal at the next general quarter sessions of the peace, to be holden in and for the (county) of against a certain conviction (or order), bearing date on or about the day of , instant, and made by (you), J. S., esquire (one) of Her Majesty's justices of the peace for the said (county) of , whereby I, the said A. B., was convicted of having (or was ordered to pay) (here state the offence as in the conviction, information, or summons; or the amount adjudged to be paid as in the order): and further take notice, that the grounds of my appeal are, first, that I am not guilty of the said offence; secondly, that the formal conviction drawn up and returned to the sessions is not in law sufficient to support the said conviction of me the said A. B. (together with any other ground, care being taken that all are stated, as the appellant will be precluded from going into any other than those stated.)

Dated this day of , 185 .

A. B.

This notice can easily be altered if given by the attorney of the appellant.

Also, if grounds of appeal are not required to be given, they can be omitted from the above notice.

CHAPTER XXIII.

TRIAL OF APPEALS.

IN considering the subject of the trial of appeals in general, it will be undesirable to refer particularly to those which have reference to the administration of the poor laws. These laws, though furnishing as they do a considerable amount of appeal business at the Quarter Sessions, are, nevertheless, of a very special and exclusive description, having for the most part a peculiar code of practice applicable to themselves, and that practice being generally entrusted to a very limited body of the profession. Every parish and union has its own legal adviser, usually the clerk of the justices for the division, who, upon this subject, has a body of legal literature of the most extensive character to which to refer for information. To treat, therefore, in this place of appeals upon this subject, would be to incumber these pages with a considerable mass of matter uninteresting to the general practitioner, without in any way throwing any additional light upon a subject so well treated by numerous works already existing.

Preparing for the Trial of an Appeal.—The course to be pursued in preparing for the trial of an appeal will not greatly vary from that pursued for a trial of a cause at the assizes; and what has before been said with reference to the trial of an indictment, will, to a great extent, be applicable here.

The getting up of the evidence will be of the greatest importance, since neither party (unless prohibited by statute) will be confined to that which was

adduced in the court below. In particular, the appellant should be prepared with proof of the service of all such notices of appeal, or otherwise, as he is required to give, or he should obtain from the other side a written admission of due service, a course which is frequently adopted, and which saves much trouble and no little expense.

Entering the Appeal.]—The course of proceeding to be adopted in entering an appeal for trial, is frequently the subject of the rules of sessions. These rules usually require the appeal to be entered with the clerk of the peace by a certain time, on the first or second day of the sessions. They, therefore, should be consulted upon the subject, or the information may be obtained by an early application at the office of the clerk of the peace himself.

Order in which Appeals are tried.]—The appeals will usually be tried in the order in which they are entered, as soon as all the unopposed motions are disposed of. The first proceeding is that of the reading by the clerk of the peace of the original conviction or order appealed against. If the appeal be against a conviction, it will have been returned by the justices, and filed at the sessions pursuant to the 11 & 12 Vict. c. 43, s. 14, so too with an order; but inasmuch as the original order will be in possession of the appellant, it will be right for him to produce it at the hearing in order to file it if necessary.

Proof of Notices, &c., by Appellant.]—The appellant will now, in the ordinary course of things, be required to adduce proof of his having given due notice of appeal (where such notice is required), and of his having entered into such recognizance, and having given such notice thereof as the statute upon the subject may have rendered necessary. Where a recognizance has been entered into, it will have been returned to the clerk of the peace by the justice who took it.

Proceeding on non-appearance of Appellant.—If the appellant does not appear according to his notice of appeal and his recognizance, the court have no functions to hear the case at the instance of the respondents: (*Reg. v. Stoke Bliss*, 13 L. J. 151, M. C.; 6 Q. B. 158; *Reg. v. The Justices of the West Riding of Yorkshire*, 12 L. J. 148, M. C.; 5 Q. B. 1.) Under such circumstances, however, they have now, by the provisions of the 12 & 13 Vict. c. 45, power to award costs to the respondents. The 6th section of this statute enacts—

That any Court of General or Quarter Sessions of the Peace, upon proof of notice of any appeal to the same court having been given to the party or parties entitled to receive the same, though such appeal was not afterwards prosecuted or entered, may, if it so think fit at the same sessions for which such notice was given, order to the party or parties receiving the same, such costs and charges, as by the said court shall be thought reasonable and just, to be paid by the party or parties giving such notice, such costs to be recoverable in the manner last aforesaid (i. e. pursuant to the 11 & 12 Vict. c. 43, s. 27.)

Proceedings on non-appearance of Respondent.—If the appellant is ready but the respondent does not appear, the justices will then quash the conviction or order, and it should seem, according to the terms of the 5th section of the 12 & 13 Vict. c. 45, they may do so with costs. But it will be first necessary to prove due service of the notice of appeal.

Appearance of both parties—Adjournments.—Supposing both parties are present, the appeal will be tried in the regular way, unless for some sufficient reason the court think fit to adjourn it to a subsequent session: (*Rex v. The Justices of Wilts*, 13 East, 352; *Rex v. The Inhabitants of Kimbolton*, 6 A. & Ell. 603.)

Proof of Notice of Appeal, &c.—Objections—Amendments.—Both parties being ready, the appellant may be called upon in the first instance to prove due

service of his notices and grounds of appeal when they are required.

At this stage it is competent to the respondents to take objection to the contents of the notices, or the manner of service. Upon this subject it is enacted, by sect. 3 of the 12 & 13 Vict. c. 45—

That upon the hearing of any appeal to any Court of General or Quarter Sessions of the Peace, no objection on account of any defect in the form of setting forth any ground of appeal shall be allowed, and no objection to the reception of legal evidence, offered in support of any ground of appeal shall prevail, unless the court shall be of opinion that such ground of appeal is so imperfectly or incorrectly set forth, as to be insufficient to enable the party receiving the same to inquire into the subject of such statement, and to prepare for trial: provided always, that in all cases where the court shall be of opinion that any objection to any ground of appeal, or to the reception of evidence in support thereof ought to prevail, it shall be lawful for such court, if it shall so think fit, to cause any such ground to be forthwith amended by some officer of the court, or otherwise, on such terms as to the payment of costs to the other party, or postponing the trial to another day in the same sessions, or to the next subsequent sessions, or both payment of costs and postponement as to such court shall appear just and reasonable.

By the 4th section of the same act, it is enacted—

That if in any notice of appeal the appellant or appellants shall have included any ground or grounds of appeal, which shall, in the opinion of the court determining the appeal, be frivolous or vexatious, such appellant or appellants shall be liable, if the court shall so think fit, to pay the whole or any part of the costs incurred by the respondent or respondents in disputing any such ground or grounds of appeal, &c.

Hearing the Appeal upon its merits—Course of Proceeding.—These preliminary matters being disposed of, the appeal will be heard upon its merits. It will now be the duty of the leading counsel for the respondents to open his case, addressing the Bench upon all matters to which it is proper their attention should be drawn. The witnesses will then be called,

examined, cross-examined, and re-examined in all respects as if the case were being tried before a jury at *Nisi Prius*.

It is usual at many sessions when there are two counsel engaged for the respondent, for the junior to sum up the case at the conclusion of his evidence; and the same when two counsel appear for the appellant and evidence is put in for him. This, however, is generally fully provided for by the rules of the sessions. The counsel for the respondents has a general reply when the appellant gives any evidence.

At the conclusion of the case for the respondents the leading counsel for the appellant will address the Bench, and he will either rely upon the legal insufficiency of the original order, or the evidence on the part of the respondents, or he will seek to rebut the case set up, by evidence of his own.

It is almost needless to observe, that the same strictness with reference to the rules of evidence, and the general course of proceedings should be observed as though the case were being argued and tried in one of the superior courts; and it may be here remarked, that when the court is sitting for the purpose of trying a matter of a purely civil character, it comes within the meaning of sect. 103 of the 17 & 18 Vict. c. 125 (the Common Law Procedure Act, 1854), and by virtue of that section, sects. from 19 to 32 inclusive of that statute are applicable to it.

Powers to Amend.—It will here be convenient to draw attention to the powers of amendment possessed by the Quarter Sessions. By sect. 7 of the 12 & 13 Vict. c. 45, it is enacted—

That if upon the trial of any appeal to any Court of General or Quarter Sessions of the Peace, against any order or judgment made or given by any justice or justices of the peace, or if upon the return to any writ of certiorari, any objection shall be made on account of any omission or mistake in the drawing up of such order or judgment, and it shall be shown to the satisfaction of the court, that sufficient grounds

were in proof before the justice or justices making such order or giving such judgment, to have authorized the drawing up thereof, free from the said omission or mistake, it shall be lawful for the court, upon such terms as to payment of costs as it shall think fit, to amend such order or judgment, and to adjudicate thereupon as if no such omission or mistake had existed, &c.

The 8th section of the same statute makes provision for the amendment of any defective recognizance.

Judgment as to Amendments to be Final.—And by sect. 9, it is enacted—

That the decisions of the Court of General or Quarter Sessions of the Peace, upon the hearing of any appeal as to the sufficiency of any statement of any grounds of appeal, and as to the amending, or refusing to amend any order or judgment of a justice or justices appealed against, or the statement of any ground or grounds of appeal, and as to the substitution of any new recognizance or recognizances as aforesaid, shall be final and shall not be liable to be reviewed in any court by means of a writ of certiorari, or mandamus, or otherwise.

Reference to Arbitration.—In certain cases the quarter sessions have power, with consent of the parties, to refer the matters in dispute to arbitration. This subject, however, will be treated of hereafter.

Decision of the Bench.—When the case on each side is closed, the Bench will deliberate upon their decision, and the chairman having collected the opinion of the majority, will pronounce it by ordering the conviction or order to be confirmed or quashed, or the rate (if such be the subject of appeal) to be amended. It is unusual for the Bench to give any reasons for their judgment. In considering their decision, all the justices have an equal voice, but none should take part in it if he be in any way interested in the result: (*Reg. v. The Cheltenham Commissioners*, 1 Q. B. 467; *Reg. v. The Justices of Hertfordshire*, 6 Q. B. 753; see *Reg. v. Justices of Surrey*, 26 L. T. 89; 21 L. J. 195, M. C.; *Reg. v. Justices of Suffolk*, 18 Q. B. 416;

Reg. v. Justices of Cambridgeshire, 25 L. T. Rep. 128; *Reg. v. Justices of London*, 18 Q. B. 421; *Reg. v. Stubbs*, 29 L. T. 107.) The chairman has no casting vote.

Equal Division of the Bench.—In the event of there being an equal division amongst the magistrates, the appeal should be adjourned to the next sessions, and again heard; and so from session to session, until a majority is obtained on the one side or the other.

Justices the absolute Judges of the Facts—Reservation of a Case.—It may be observed, that upon an appeal, the justices are the absolute judges of the facts as a jury, and that they cannot, even if they would, remit any question of that kind to a superior tribunal: (*Reg. v. The Justices of the West Riding of Yorkshire*; *Reg. v. The Justices of Kesteven*, 3 Q. B. 810; *Reg. v. Justices of the West Riding of Yorkshire*, 1 New Sess. Cas. 247.) If, however, they doubt the legal inference to be drawn from the facts, or desire the opinion of the court upon any question of law, they may reserve a case, of which hereafter. As to what is a decision of a fact by a justice upon which the Queen's Bench will not interfere: (*Reg. v. Paynter*, 26 L. J. 102, M. C.; *Reg. v. Dayman*, 26 L. J. 128, M. C.)

Effect of quashing Conviction or Order.—Should the conviction or order be quashed the case is at an end, and the appellant will be discharged from all liability arising out of his former conviction.

Decision as to Costs.—Upon the pronouncing of their decision, the justices will determine as to the question of costs. The sessions have a very wide latitude allowed them upon this subject, it being quite in their discretion whether or not they will allow any or what amount of costs. This subject is now governed by section 5 of the 12 & 13 Vict. c. 45, which enacts—

That upon any appeal to any Court of General or Quarter Sessions

of the Peace, the court before whom the same shall be brought may, if it think fit, order and direct the party or parties against whom the same shall be decided, to pay to the other party or parties such costs and charges as may to such court appear just and reasonable, such costs to be recoverable in the manner provided for the recovery of costs upon an appeal against an order or conviction by an act passed in the twelfth year of Her Majesty's reign, intituled *An Act to facilitate the performance of the Duties of Justices of the Peace out of Sessions within England and Wales, with respect to Summary Convictions and Orders*, (11 & 12 Vict. c. 43, s. 27.)

Under this section it has been held that the sessions has power to award costs upon an appeal being brought before them, although the court has, in fact, no jurisdiction to hear the case upon its merits, and the appeal is dismissed on that ground: (*Reg. v. Padwick*, 27 L. J. 113, M. C.)

Amount of Costs to be fixed by the Justices.—The costs when granted by the sessions form a part of the order, and the amount must be ascertained by and in the order itself, before the conclusion of the sessions, and the sessions cannot delegate (unless by consent) to the clerk of the peace or any one else out of sessions, the duty of ascertaining such amount: (*Selwood v. Mount*, 1 Q. B. 726; *Reg. v. Long*, 1 Q. B. 740; *Reg. v. Clark*, 5 Q. B. 887; *Reg. v. Mortlock*, 7 Q. B. 459; 14 L. J. 153, M. C.)

The court will often at once order a fixed sum to be paid for costs, or they will direct the clerk of the peace to ascertain the proper legal costs of the party during the sessions, and then they will fix it at the amount so ascertained. Either course is perfectly correct, so that the justices actually ascertain and award the amount during the sessions.

Mode of obtaining Payment of the Costs.—The mode by which the costs are obtained is now rendered uniform and certain by the 11 & 12 Vict. c. 43, s. 27, which enacts—

That if upon any such appeal the Court of Quarter Sessions shall

order either party to pay costs, such order shall direct such costs to be paid to the clerk of the peace of such court, to be by him paid over to the party entitled to the same, and shall state within what time such costs shall be paid; and if the same shall not be paid within the time so limited, and the party ordered to pay the same shall not be bound by any recognizance conditioned to pay such costs, such clerk of the peace or his deputy upon application of the party entitled to such costs, or of any person on his behalf, and on payment of a fee of one shilling, shall grant to the party so applying a certificate that such costs have not been paid; and upon production of such certificate to any justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, it shall be lawful for him or them to enforce the payment of such costs by warrant of distress in manner aforesaid, and in default of distress he or they may commit the party against whom such warrant shall have issued in manner hereinbefore mentioned, for any time not exceeding three calendar months, unless the amount of such costs, and all costs and charges of the distress, and also the costs of the commitment and conveying of the said party to prison if such justice or justices shall think fit so to order (the amount thereof being ascertained and stated in such commitment) shall be sooner paid.

The course pointed out in the foregoing section is now the only one to be pursued, impliedly repealing as it does the provisions of any prior statute in which there is a different enactment as to the costs of appeal: (*Reg. v. Hellier*, 21 L. J. 3, M. C.; see also *Reg. v. Huntley*, 23 L. J. 106, M. C.)

CERTIFICATE OF THE CLERK OF THE PEACE THAT THE COSTS OF
AN APPEAL ARE NOT PAID.

Office of the Clerk of the Peace for the (county) of

(Title of the Appeal.)

I do hereby certify that at a Court of General Quarter Sessions of the Peace holden at in and for the said (county) on last past, an appeal by A. B. against a conviction (or order) of J. S. esquire, one of Her Majesty's justices of the peace for the said (county), came on to be tried, and was then heard and determined, and the said Court of General Quarter Sessions thereupon ordered that the said conviction (or order) should be confirmed (or quashed), and that the said

(*appellant*) should pay to the said (*respondent*) the sum of , for his costs incurred by him in the said appeal, and which sum was thereby ordered to be paid to the clerk of the peace of the said county, on or before the day of , instant, to be by him handed over to the said (*respondent*); and I further certify that the said sum for costs has not nor has any part thereof been paid in obedience to the said order.

Dated the day of , 18 .

G. H.

(*Deputy*) clerk of the peace.

WARRANT OF DISTRESS FOR COSTS OF AN APPEAL AGAINST
A CONVICTION OR ORDER.

— } To the constable of , and to all other peace officers in
to wit. } the said (*county*) of .

Whereas, (*fc.*, as in the warrants of distress hereinbefore given, to the end of the statement of the conviction or order, and then thus) and whereas the said A. B. appealed to the Court of General Quarter Sessions of the Peace for the said county against the said conviction (*or order*), in which appeal the said A. B. was the appellant, and the said C. D. (*or J. S.*, esquire, the justice of the peace who made the said conviction *or order*) was the respondent, and which said appeal came on to be tried, and was heard and determined at the last General Quarter Sessions of the Peace for the said county, holden at , on , and the said Court of General Quarter Sessions thereupon ordered that the said conviction (*or order*) should be confirmed (*or quashed*), and that the said (*appellant*) should pay to the said (*respondent*) the sum of , for his costs incurred by him in the said appeal, which said sum was to be paid to the clerk of the peace for the said (*county*) on or before the day of , 18 , to be by him handed over to the said (*C. D.*): and whereas the (*deputy*) clerk of the peace of the said (*county*), hath on the day of , instant, duly certified that the said sum for costs had not then been paid. (*) These are therefore to command you in Her Majesty's name, forthwith to make distress of the goods and chattels of the said (*A. B.*), and if within the space of days next after the making of such distress, the said last-mentioned sum, together with the reasonable charges of taking and keeping the said distress shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to the clerk of the justices of the peace

for the division of _____, in the said (county) that he may pay and apply the same as by law directed, and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.

Given under my hand and seal this _____ day of _____, in the year of our Lord _____, at _____, in the (county) aforesaid.

J. N. [L. S.]

WARRANT OF COMMITMENT FOR WANT OF DISTRESS IN THE LAST CASE.

_____ } To the constable of _____, and to the keeper of the (House of
to wit. } Correction) at _____, in the said (county) of _____.

Whereas (jfc., as in the last form to the asterisk (*), and then thus); and whereas afterwards, on the _____ day of _____ in the year aforesaid, I, the undersigned, issued a warrant to the constable of _____, commanding him to levy the said sum of _____, for costs, by distress and sale of the goods and chattels of the said A. B.; and whereas it appears to me, as well by the return of the said constable to the said warrant of distress as otherwise, that the said constable hath made diligent search for the goods and chattels of the said A. B., but that no sufficient distress whereon to levy the sum above mentioned could be found: these are therefore to command you, the said constable of _____, to take the said A. B. and him safely to convey to the (House of Correction) at _____ aforesaid, and there deliver him to the said keeper thereof, together with this precept; and I do hereby command you, the said keeper of the said (House of Correction), to receive the said A. B. into your custody in the said (House of Correction), there to imprison him (and keep him to hard labour) for the space of _____, unless the said sum, and all costs and charges of the said distress (and of the commitment and conveying of the said A. B. to the said House of Correction), amounting to the further sum of _____, shall be sooner paid unto you the said keeper, and for your so doing this shall be your sufficient warrant.

Given under my hand and seal this _____ day of _____, in the year of our Lord _____ at _____, in the (county) aforesaid.

J. N. [L. S.]

Payment to Constable or Gaoler.—By section 28 of the 11 & 12 Vict. c. 43, the constable and gaoler
[M. C.] 2 D

are empowered to receive the amounts due from the defendant, and thereupon to discharge him.

Estreating Recognizances.—With reference to estreating recognizances, it will be sufficient to direct the reader's attention to Dickinson's Q. Sess. 994, and Burn's Justice, vol. 5, tit. "Fines, Forfeitures," &c.

Enforcing Orders of Sessions.—Before the passing of 12 & 13 Vict. c. 45, the only method of enforcing obedience to an order of quarter sessions was by indictment for disobedience: (see *Reg. v. Brisby*, 18 L. J. 157, M. C.), a proceeding which was obviously open to many very serious objections. By the 18th section of that statute, however, a summary method of enforcement is prescribed, by application to the Court of Queen's Bench, or a judge at chambers. The section is as follows:

That in all cases where any order shall be made by any Court of General or Quarter Sessions of the Peace, it shall be lawful for the Court of Queen's Bench, or for any judge of that court at chambers, either in term or vacation, upon the application of any person entitled to enforce such order, and upon the production of a copy of such order under the hand of the clerk of the peace, or his deputy, and upon proof of refusal or neglect to obey such order, to order and direct such order of the Court of General or Quarter Sessions to be removed into the said Court of Queen's Bench, and thereupon such order shall be of the same force and effect, and may be enforced in the same manner as a rule made by the Court of Queen's Bench; and all the reasonable costs and charges attendant upon such application and removal shall be recoverable in like manner as if the same were part of such order.

Method of Proceeding.—If, therefore, the party in respect of whom any such order of sessions is made, refuses or neglects to obey it, it will be competent for any person who is entitled to enforce it, to apply for that purpose either to the court or a judge at chambers in term time, or to a judge at chambers in vacation. In order to do this, the party must obtain a copy of

the order from the clerk of the peace, under his hand or that of his deputy, the fact of which should be verified by affidavit ; there should also be proof by affidavit, that the party has refused or has neglected to obey such order ; and upon these materials the court upon motion, or the judge at chambers upon application, will order that such order of sessions shall be removed into such Court of Queen's Bench. The application will be for an order merely, and not for a writ of *certiorari*: (*Hawker v. Field*, 20 L. J. 41, M. C.) when returned it may be enforced by a writ of *fieri facias* or an *attachment* according to circumstances as pointed out by the practice of the Queen's Bench. It may here, however, be observed that the foregoing section does not apply to an order of Quarter Sessions to abate a nuisance made after a trial of an indictment for a nuisance : (*Reg. v. Bateman*, 27 L. J. 95, M. C.)

CHAPTER XXIV.

THE RESERVATION OF CASES AFTER NOTICE OF APPEAL
AND REFERENCES TO ARBITRATION UPON APPEALS
TO THE SESSIONS.

WHERE upon the trial of an appeal at the Quarter Sessions, the Bench feel a doubt as to the law applicable to any state of facts, they have power to reserve a special case upon the point for the opinion of the Court of Queen's Bench, provided the writ of *certiorari*, whereby such case may be removed, is not taken away. This course of proceeding has, in practice, been found so convenient, that recently the Legislature has conferred somewhat similar powers without compelling the parties to go, in the first instance, to the sessions. Not only, however, has the Legislature in this way afforded a convenient method for deciding questions purely of law, but by introducing into the practice of Quarter Sessions the popular machinery of reference to arbitration, it has established a means of deciding a variety of intricate and complicated questions, highly beneficial to the ends of justice.

STATEMENT OF A CASE WITHOUT GOING TO THE
SESSIONS PREVIOUSLY.

Before the passing of the 12 & 13 Vict. c. 45, no power existed out of sessions of reserving a case for the opinion of the court above upon any question of law or fact. But by the 11th section of that statute, it is enacted—

That at any time after notice given of appeal to any Court of Genera

or Quarter Session of the Peace against any judgment, order, rate, or other matter (except an order in bastardy, or a proceeding under or by virtue of any of the statutes relating to Her Majesty's revenue of excise or customs, stamps, taxes, or post office) for which the remedy is by such appeal, it shall be lawful for the parties by consent and by order of any judge of one of the Superior Courts of Common Law at Westminster, to state the facts of the case in the form of a special case for the opinion of such superior court, and to agree that a judgment in conformity with the decision of such court, and for such costs as such court shall adjudge, may be entered on motion by either party at the sessions next, or next but one after such decision shall have been given; and such judgment shall and may be entered accordingly, and shall be of the same effect in all respects as if the same had been given by the Court of General or Quarter Sessions upon an appeal entered and continued.

Over what matters, when and how Case may be stated.—It will be seen that the statute applies, with the exceptions stated, to all *judgments, orders, rates, and other matters* in which there is an appeal to the Quarter Sessions. Before, however, advantage can be taken of the enactment, notice of appeal must, in fact, have been given, and the proceeding must be by mutual consent, that is, both the appellant and the respondent must agree to a case being stated, and to being bound by the result. Unless a case reserved at the Quarter Sessions, the Bench have nothing to do with it, and if the appellant and respondent agree to a case being stated, it is all that is required. In many cases the Bench will undoubtedly be themselves respondents, and they always are such in cases of summary convictions, unless some other party is pointed out. The statute uses the word "*parties*," as though the consent to the stating of a case must not necessarily be by the persons who legally stand in the relative position of appellant and *respondent*; but if this be so, it is difficult to see how the concluding provisions of the clause are to be carried out as against any one who does not stand legally in the position of either appellant or respondent.

The course to be pursued.—If it is intended to take advantage of this section, the proceedings will be as follows :—Notice of appeal must be given, and then a consent should be obtained, which had better be in writing, that the facts in dispute shall be stated under the provisions of this statute in the shape of a special case for the opinion of one of the superior courts. An application upon such consent will then be made to a judge for an order for the facts to be so stated in the form of a special case for the opinion of such court, &c. ; hereupon an order will be made which will also contain the terms of submission mentioned in the concluding portion of the section. The special case will then be drawn by the appellant, and submitted to the other side for approval, and if the parties cannot agree upon the facts, reference should be made to the justices who heard the case, to settle them. There is no particular form of case required; the facts, however, should be clearly stated, and the question or questions upon which the court are to decide concisely set out.

The special case may be in the following form :—

SPECIAL CASE OUT OF SESSIONS BY VIRTUE OF SECTION 11 OF
THE 12 & 13 VICT. C. 45.

In the Queen's Bench, Common Pleas,
or Exchequer of Pleas.

In the matter of an information or
complaint wherein A. B. was in-
formant or complainant,
and

C. D. defendant.

At a petty sessions holden in and for the division of , in the (county) of , on the day of , before , justices of the peace acting in and for the said (county) of , one C. D. of , (labourer), was charged in and by a certain (information, complaint, or summons) for that (here state the subject-matter of the information, complaint, or summons) ; and the said C. D. being present then and there, the said charge was duly heard by the justices aforesaid in due form of law ; and whereas, upon such hearing it was proved in

evidence on the part of the informant (or complainant) that (*here state the facts which give rise to the question or questions to be decided*): and whereas upon the hearing of the said information (or complaint) as aforesaid, the said C. D. was duly convicted by the said justices as aforesaid, of the said offence (or the said C. D. was adjudged to pay, &c., as in the order), and it was hereby adjudged (*as in the conviction or order*): and whereas the said C. D. hath given due notice of appeal against the said conviction (or order): and whereas it hath been agreed by and between the said C. D. and the said , who are the respondents in the said appeal, that pursuant to the provisions of an act passed in the session of Parliament holden in the twelfth and thirteenth years of the reign of Her Majesty Queen Victoria, entitled "An Act to amend the Procedure in Courts of General and Quarter Sessions of the Peace in England and Wales, and for the better Advancement of Justice in Cases within the Jurisdiction of those Courts," the facts of the said case should be stated in the form of a special case for the opinion of the Court of Queen's Bench (or Common Pleas, or Exchequer of Pleas): and whereas in pursuance of such agreement, an order hath been made by the Honourable Mr. Justice , which order is as follows (*here set out the order*.)

The question for the opinion of the court is (*here state the question at issue*.)

If the court shall be of opinion in the affirmative thereof, then the said C. D. agrees that a judgment in conformity with such decision and for such costs as the court may adjudge, may be entered on motion by the respondents at the sessions next or next but one after such decision shall have been given.

If the court shall be of a contrary opinion, then the respondents agree that a judgment in conformity with the decision of such court, and for such costs as such court may adjudge, may be entered on motion by the said C. D. at the sessions next or next but one after such decision shall have been given.

(*The case can easily be modified to suit peculiar circumstances.*)

(*It should be signed by the parties, their counsel or attorneys.*)

Practical Proceedings.]—When fairly copied, it should, with the order attached, be set down for argument in the Crown paper of the Queen's Bench, or the special paper of either of the other two courts. It will then come on for argument in its turn, and counsel

being heard for the respective parties, the court will give judgment. Paper books will have to be delivered to the judges pursuant to the practice of the court.

Upon this, a rule will be drawn up embodying the decision of the court, and upon this rule application will be made to the sessions next or next but one after the decision that judgment shall be entered in conformity therewith. Notice of this intended application should be given to the other side.

The judgment so to be entered is directed by section 11 of the 12 & 13 Vict. c. 43, to be of the same effect, in all respects, as if the same had been given by the Court of General or Quarter Sessions, upon an appeal duly entered and continued.

REFERENCE TO ARBITRATION WITHOUT GOING TO THE SESSIONS.

In addition to the power conferred upon the parties to state a case for the opinion of the court, they are enabled by mutual consent in certain cases to refer the subject-matter in dispute to arbitration. This power is provided for by section 12 of the 12 & 13 Vict. c. 45, which, after reciting that, by a statute passed in the tenth year of King William the Third, intituled *An Act for determining Differences by Arbitration*, provision was made for rendering more effectual the awards of arbitrators in the case of controversies and disputes for which there is no other remedy but by personal action or by suit in equity, and that it is expedient in like manner to facilitate and render more effectual references to arbitration of controversies and disputes, for which the remedy is by appeal to the Court of General or Quarter Sessions of the Peace, enacts—

That at any time after notice given of appeal to any Court of General or Quarter Sessions of the Peace against any order, rate, or other matter (except a summary conviction or an order in bastardy, or any proceeding under or by virtue of any of the statutes relating to Her Majesty's revenue of excise or customs, stamps, taxes, or post-office), for

which the remedy is by such appeal, it shall be lawful for the parties, by themselves or their attorneys, and by order of a judge of Her Majesty's Court of Queen's Bench, to submit the matter or matters of such appeal to the award or umpirage of any person or persons, and to agree that such submission should be made a rule of the said Court of Queen's Bench, and to insert such agreement in their submission or the condition of the bond or promise whereby they oblige themselves respectively to submit to the award or umpirage of such person or persons; and thereupon such and the like proceedings in all respects shall and may be taken with regard to submissions under this act, and to enforcing awards or umpirages thereupon, and to setting aside the same, as are authorized by the said act of King William the Third, with regard to cases therein provided for; and every award or umpirage duly made under this act shall be as binding and effectual to all intents as if the same had been a regular judgment of the said Court of General or Quarter Sessions, and shall and may, on the application of either party, be enrolled among the records of the said Court of Sessions.

To what Cases applicable.—This section, it will be observed, is confined to *orders, rates, and other matters*; summary convictions, &c. being expressly excluded from its operation. Its limited operation will therefore necessarily restrict its adoption. As the practice upon the subject is that upon references generally, it will be unnecessary further to pursue the subject.

REFERENCE TO ARBITRATION BY THE COURT OF QUARTER SESSIONS.

Of a very similar nature to the powers before noticed of a reference to arbitration by the parties without first going to the sessions are those possessed by the Court of Quarter Sessions upon the hearing of an appeal. By section 13 of the 12 & 13 Vict. c. 45, it is enacted—

That it shall be lawful for any Court of General or Quarter Sessions of the Peace before which any appeal (except against a summary conviction or an order in bastardy, or any proceeding under or by virtue of any of the statutes relating to Her Majesty's revenue of

excise or customs, stamps, taxes, or post-office) shall be brought to order with consent of the parties or their attorneys, that the matter or matters of such appeal be referred to arbitration to such person or persons, and in such manner and on such terms as the said court shall think reasonable and proper; and such order may be made a rule of the Court of Queen's Bench on the application of either party; and the award of the arbitrator or arbitrators, or umpirage of the umpire may on motion by either party at the sessions next or next but one after such award or umpirage shall have been finally made and published, or after the decision of the Court of Queen's Bench, on any motion for setting aside the same, be entered as the judgment of the Court of General or Quarter Sessions in the appeal, and shall be as binding and effectual to all intents as if given by the said court: provided always, that the Court of Queen's Bench may if it think fit on application within the term next after the making and publication of such award or umpirage, either refer the case back again to the same arbitrator or arbitrators or umpire, or wholly set aside the award or umpirage already made, and may in the latter event order the Court of General or Quarter Sessions to enter continuances and hear the appeal.

By the 14th section of the same enactment provision is made for the contingency of the arbitration becoming abortive. The section runs thus :—

That if upon any reference to arbitration under this act, it shall be made to appear to the Court of Queen's Bench, that either from the death of the arbitrator or arbitrators, or umpire, or from any other cause it has become impossible that an award or umpirage can be made, it shall be lawful for the said court to order the Court of General or Quarter Sessions of the Peace to enter continuances and hear the appeal.

And by the 15th section it is enacted—

That the several provisions relating to arbitrations contained in an act of the fourth year of King William the Fourth, intituled *An Act for the further Amendment of the Law, and the better Advancement of Justice*, shall be deemed and taken to be applicable to arbitrations under this act; and in every such arbitration the arbitrator or arbitrators, or umpire, shall have the same power of amendment which

the Court of General or Quarter Sessions of the Peace would have had on the trial of the appeal.

With powers so ample as those conferred by the above sections, references to arbitration by the Court of Quarter Sessions have in practice been peculiarly convenient, particularly in cases of disputed rating (especially of railways), in which many nice and difficult points frequently arise, requiring much careful and patient investigation: (*Reg. v. The Great Western Railway*, 15 Q. B. 389.)

GRANTING A SPECIAL CASE AT SESSIONS FOR THE OPINION OF THE QUEEN'S BENCH.

From the decision of the Court of Quarter Sessions as of *right* there is no appeal. The justices, however, if they think fit, may, in any given case in which they are in doubt upon a question of law, reserve the point in the shape of a special case for the opinion of the Court of Queen's Bench; provided the writ of *certiorari* by which such case is removed is not taken away.

When a Case should be granted.—The jurisdiction of justices upon appeals, placing them in the situation of both juries and judges, having as well to ascertain the facts as to apply the law, it is in their discretion alone to grant or withhold a case; should they, however, entertain a reasonable doubt upon any question of law governing their decision, they will, at the instance of either party, or upon their own motion, grant a case in order that such doubt may be solved by the court above. As the only matter upon which the sessions can seek the opinion of the court above is one of *law*, they must ascertain for themselves the *facts* of the case, leaving it merely to the court above to draw from them the proper legal inferences.

Appeal to be heard out before granting a Case.—Before granting a case, however, the sessions will hear out the appeal in order to pronounce a decision the one

way or the other, it being their duty to ascertain the facts, and decide upon them contingently upon the ultimate decision of the court above. In *Reg. v. The Justices of Kesteven* (3 Q. B. 810; 13 L. J. 78, M. C.), Lord Denman, C. J., said—

In this case there is one thing satisfactory: it must now be taken to be universally known that this court will not decide a question merely for the purpose of putting an inferior court in motion, with a view to its entering upon a particular trial: we will give an opinion upon a point of law if the decision of the inferior court shall render it necessary, but if they ask us merely whether they are to go forward or not, we will not tell them merely to create new expense, and new litigation.

How Case prepared.—If the Bench decide upon granting a special case, though in contemplation of law, it is deemed to be stated by *them*, and for *their* guidance; in practice it is usually drawn by the counsel of the party for whom it is required.

The case then will be drawn by the junior counsel of the party against whom the decision has been pronounced, by whom it will be sent to the junior counsel of the opposite party for perusal and approbation: If they agree to it, they mutually sign it. If they disagree upon the facts or point to be referred, they refer to the chairman to decide between them. No particular form of case is required, but the following form may be adopted:—

In the Queen's Bench,

In the matter of an appeal

Between A. B. appellant,

and

C. D. and E. F. respondents.

This was an appeal against a conviction under the hands and seals of C. D. and E. F. esquires, two justices acting in and for the county of _____, at a petty session of the peace, holden before them at _____ in and for the division of _____, in the said county of _____, on the _____ day of _____, 185 .

The said appeal was tried at the _____ Quarter Sessions of the

Peace for the said county, holden at _____, on the _____ day of _____ in the year aforesaid, when the court confirmed (or quashed) the said conviction, subject to the opinion of the Court of Queen's Bench upon the following

CASE.

Here state the facts of the case as admitted to have been proved on the trial, care being taken that the point upon which the question arises is clearly set forth. The case may then conclude,

If the court shall be of opinion (stating clearly the question), then the said conviction shall stand confirmed.

But if the court shall be of a contrary opinion, then the said conviction shall be quashed.

G. H. for the appellant.

I. J. for the respondents.

(If the appeal has been against an order, the case can be modified.)

The special case, having been settled and signed by the respective parties, is deposited with the clerk of the peace, who thereupon makes out a fair copy thereof to be returned to the Crown Office upon a certiorari issuing for the purpose of carrying it up.

The subsequent proceedings, whereby the case is removed and ultimately argued, belonging more properly to the practice of the Crown officer, need not be further referred to here.

RESERVING A CASE FOR THE OPINION OF THE COURT
FOR CROWN CASES RESERVED.

Since the passing of the 11 & 12 Vict. c. 78 (An Act for the further Amendment of the Administration of the Criminal Law), the Court of Quarter Sessions have power to reserve any question of law which shall have arisen on the trial for the consideration of the judges of the courts above, and thereupon they may respite execution of the judgment, or postpone the judgment until such question shall have been considered and decided, and in either case may either commit the prisoner convicted to prison, or take a recognizance with one or two sureties in such sum as they shall think fit, conditioned to appear at such time or times

[M. C.]

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as the court shall direct and receive judgment, or to render himself in execution, as the case may be.

The statute requires no particular form of case to be adopted. It should, however, carefully set out any fact necessary for the decision of the court.

The following case may be taken as a good general precedent :—

In the Court for the Consideration
of Crown Cases Reserved.

The Queen on the prosecution of A. B.
against

William Dovey and Elizabeth Gray.

At the Epiphany Quarter Sessions for the county of Hants, holden at Winchester on the day of 185 , William Dovey and Elizabeth Gray were charged on an indictment (a copy of which is hereunto annexed) in the first count with stealing, and in the second count with receiving twelve turkeys, knowing them to have been stolen.

Dovey, and a man named Hodder who had absconded, both resided at Brook, in the county of Hants, near the premises of the prosecutor, from which the property was stolen; they were both in company with others at a public-house at eleven o'clock on the night the turkeys were stolen, and at eight o'clock on the following morning they were seen together ten miles from Brook, on the road from that place to Salisbury, with a horse and cart belonging to Dovey. The same day Dovey sold two of the turkeys at Salisbury, and the other prisoner, Elizabeth Gray, who resided at Salisbury, was proved to have disposed of the remaining ten at Salisbury on the same day.

The prisoner Dovey made a statement which was given in evidence, that he was called up at two o'clock in the night on which the turkeys were stolen, by Hodder, who brought the turkeys to him in a sack, and that he took them to Salisbury and sold them for Hodder.

The jury returned a verdict of guilty against both prisoners on the second count for receiving.

It was objected by counsel for Elizabeth Gray, citing *R. v. Massingham* (2 Moo. C. C. 257), that the prisoners could not be convicted, inasmuch as the indictment charged a joint receiving, whereas the evidence showed separate acts of receiving; and at the suggestion of counsel, it was put to the jury whether they found a joint or separate receiving; upon which they returned the following verdict:—"We find that William

Dovey received on the road between Brook and Salisbury, and Elizabeth Gray at Salisbury. The prisoners were not together at the time."

Sentence of imprisonment was passed upon both prisoners and execution respited. Elizabeth Gray was admitted to bail, and William Dovey was remanded to prison until the question arising on this conviction shall have been decided.

The opinion of the court is prayed whether, upon this verdict, the judgment given ought to be reversed in favour of both or either of the prisoners.

(Singed) C. D., Chairman.

(In the foregoing case the conviction of Gray was reversed.)

The 2nd section of the statute provides for the decision of the court above being certified to the clerk of the peace, who is to enter the same on the original record in proper form, and a certificate of such entry under his hand in the form (or as near it as may be), in the schedule, is to be transmitted to the sheriff or gaoler in whose custody the party convicted shall be, which certificate is to be a sufficient warrant, &c.

The following is the form of certificate :—

Whereas at the sessions of the peace for the county of _____, held on _____, before _____, and others their fellows, A. B., late of _____, (labourer), having been found guilty of felony, and judgment thereon given that (*state the substance*), the court before whom he was tried, reserved a certain question of law for the consideration of the Justices of either Bench and the Barons of the Exchequer, and execution was thereupon respited in the meantime. This is to certify that the said justices and barons having met in the Exchequer Chamber at Westminster on the _____ day of _____, it was considered by the said justices and barons there that the judgment aforesaid should be annulled, and an entry made on the record that the said A. B. ought not, in the judgment of the said justices and barons to have been convicted of the felony aforesaid; and you are therefore hereby required forthwith to discharge the said A. B. from your custody.

To the gaoler of _____, and the sheriff of _____, and all others whom it may concern.

(Signed) E. F.

Clerk of the Peace for the county of _____.

As the provisions of this statute are not more applicable to Courts of Quarter Sessions than to those of Oyer and Terminer and General Gaol Delivery (the assizes), and are to be found treated upon in the various works devoted to the criminal law generally, it will be sufficient here to indicate the general object of the statute, leaving the practitioner or student to obtain more minute information from the pages of those works which are devoted to the elucidation of the criminal law at large.

CHAPTER XXV.

THE STATEMENT OF A CASE BY JUSTICES UPON
A SUMMARY CONVICTION OR ORDER.

THE recent statute of the 20 & 21 Vict. c. 43 ("An Act to Improve the Administration of the Law so far as respects Summary Proceedings before Justices of the Peace"), which gives a right to either party upon a complaint or information before a justice of the peace who is dissatisfied with the determination, as erroneous in point of law, to require a case to be stated for the opinion of one of the superior courts, has removed from the administration of justice at petty sessions one of its greatest defects, and has proved in its operation to be at once as convenient and satisfactory to the suitors in these courts, as it has been assuring and supporting to the magistrates in the discharge of their important duties.

The rights conferred by this statute are chiefly embodied in the 2nd section, which enacts that—

After the hearing and determination by a justice or justices of the peace of any information or complaint which he or they have power to determine in a summary way by any law now in force, or hereafter to be made, either party to the proceeding before the said justice or justices may, if dissatisfied with the said determination, as being erroneous in point of law, apply in writing, within three days after the same, to the said justice or justices, to state and sign a case setting forth the facts and the grounds of such determination, for the opinion thereon of one of the superior courts of law, to be named by the party applying; and such party, hereinafter called "the appellant," shall within three days after receiving such case transmit the same to the court named in his application, first giving notice in writing of such appeal, with a copy

of the case so stated and signed to the other party to the proceeding in which the determination was given, hereinafter called "the respondent."

Considerations before deciding upon requiring a case to be stated.—Should the decision of the justices be of such a nature as to warrant the belief that it will be reversed upon a case stated under this statute, it will, nevertheless, be well to consider maturely whether or not it will be desirable to require such case to be stated, and the following considerations will properly be entertained. *First.* It is only with reference to some error *in point of law* that a case can be stated under the section, the justices being still the sole judges as regards any question of fact. If, therefore, the only objection to the decision of the justices be that they have given too much weight, or not enough to certain facts, have decided against the weight of evidence, or have drawn unsound conclusions, in fact, from the evidence adduced, no ground for a case will exist. *Second.* It may be, however, that an objection exists both to their decision upon the *facts* and as to the *law*. In such case it will be proper to consider whether or not any right of appeal is given to the quarter sessions. If there be, then it must be well considered whether it is advisable to take advantage of such right of appeal, or require a case to be stated. Now the advantages and disadvantages of the one course over the other are these. By an appeal to the quarter sessions the entire case is open to the appellant, and he can avail himself of every defence involved both in law and fact as he could have done before the justices at petty sessions, with this further advantage, that if there be any inherent legal defect upon the face of the proceedings, the quarter sessions may probably grant a case upon the point, or their order may be removed by *certiorari* into the Queen's Bench, and there quashed; and it must be remembered that on having a case stated under this statute, the appellant loses his right of appeal to the quarter sessions, it being enacted by section 14, that by appeal-

ing under this act the appellant is to be taken to have abandoned any right of appeal which he may have had to the quarter sessions. On the other hand, the costs of an appeal to the sessions, involving, as they will, if the appellant be unsuccessful, the expenses of the respondent, his witnesses, counsel, &c., will be very considerable, very far exceeding the cost of a case under the statute, whilst the delay in obtaining a final decision may be much greater, without the satisfaction of having obtained the highest legal opinion upon the question. *Third.* That as regards a decision by justices *against the informant or complainant*, that whilst a statute rarely gives him a right of appeal to the quarter sessions, his only method of reviewing or reversing their decision, where no such appeal exists, will be by a case under this statute, the determination of which, however, in favour of the respondent, would involve him (the appellant) in considerable costs. *Fourth.* That the right of having a case stated, exists only where the determination of justices is upon a *complaint or information*, and that it does not exist where the decision is not founded upon either of these proceedings, as where the decision is upon an application for a *license*.

Application to justices to state a case.—Supposing therefore it has been determined to take advantage of the provisions of this statute and to require a case to be stated, it will be necessary that within three days after the determination, to apply in writing to the justice or justices to state and sign a case, setting forth the facts and grounds of such determination, for the opinion of one of the superior courts of law to be named by the party applying.

Service of notice on Justices to state a case.—The notice here referred to should be served upon each of the justices whose determination it purports to be, by delivering it personally or by leaving it at their places of residence; and as an additional caution, it will be

well to deliver a copy also to their clerk. The notice may be in the following form:—

FORM OF NOTICE.

To A. B. and C. D. esquires, two of Her Majesty's justices of the peace acting in and for the county of .

In the matter of an information (*or* complaint), wherein E. F. was informant (*or* complainant), and I, the undersigned G. H. was defendant, heard before and determined by you at in the said county , on the day of instant.

Gentlemen,—I hereby give you notice that pursuant to the provisions of the 20 & 21 Vict. c. 43, entitled "An Act to improve the administration of the law, so far as respects summary proceedings before justices of the peace," I, being dissatisfied with your determination of the said information (*or* complaint), do require you to state and sign a case setting forth the facts and grounds of your determination upon the hearing of the said information (*or* complaint), in order that I may take the opinion thereon of Her Majesty's Court of Queen's Bench (*or* Common Pleas *or* Exchequer of Pleas.)

Dated this day of , 185 .

I am, gentlemen,

Yours, &c.,

G. H.

(*Place of abode.*)

This form can be modified to suit the case of the informant or complainant being the party requiring the case.

Within what time the notice to be given.—This demand of a case is to be made within three days after the determination, one day being inclusive, and the other exclusive—thus, if the determination be pronounced on Monday, the last day for giving notice will be the Thursday following. Some doubt exists as to when the notice should be given if the last day be a Sunday. In *Peacock v. The Queen* (31 L. T. Rep. 101), which was a case under this statute, the matter was heard before the justices on a Thursday, and the application to them to state a case was made on

the following Monday, and this fact being noticed by the justices in the case stated by them, it was objected upon the argument that the notice was not given within the three days. The court seems to have held that the notice was too late, and dismissed the appeal. The report of the case is very short and most unsatisfactory, no cases or authorities appearing to have been cited, as they may have been in support of the validity of the notice. Should this point again arise, we have little doubt of its being otherwise decided, and that it will be held, that under such circumstances the service on the Monday is good service. By the 29 Car. 2, c. 7, it is enacted, "that no person or persons upon the Lord's day shall serve or execute, or cause to be served or executed, any writ, process," &c., and it has been held, that a notice of appeal is *process* within this statute: (*Reg. v. The Justices of Middlesex*, 17 L. J. 111, M. C.) By the 7 & 8 Vict. c. 101, s. 4, the putative father in an order of affiliation, if he desires to appeal against such order, must give notice of appeal within twenty-four hours after the adjudication. In the foregoing case of *Reg. v. The Justices of Middlesex*, the adjudication was at five o'clock on a Saturday, and the notice of appeal was not served until the following Monday morning. Upon the case coming on at the Quarter Sessions, the court held the notice of appeal bad for the reason that it was not given within the twenty-four hours, and they dismissed the appeal; upon the question, however, coming before the Queen's Bench, that court held the notice well given, and made absolute a rule for a *mandamus* to the sessions to hear the appeal. Mr. Justice Erle in giving judgment, said, "I am also of opinion that the notice of appeal would come within the meaning of the word 'process' in the statute of Charles. It is a notice of what one court has decided, and it authorizes another court to take further proceedings. It is therefore in the nature of process and, by analogy to the cases as to declarations in ejectment and other proceedings *inter partes*, it cannot be served on

Sunday." In like manner, under the present statute, the application for a case is in the nature of process, and it is difficult to see any distinction in principle between the two cases. However, as the Common Pleas have decided as before mentioned in *Peacock v. The Queen*, their decision must be treated as the correct exposition of the law until reversed, and it will be well therefore that the defect exhibited in that case should be carefully avoided, and that where the last of the three days falls upon a *Sunday*, the notice for the case should be given not later than the preceding Saturday.

The statute does not require the justices to state the case within any particular time.

Appellant to enter into a recognizance—Discharge out of custody.—At the time of making such application, and before the case is to be stated and delivered to him, the party applying for it is to enter into a recognizance before a justice or justices with or without surety or sureties, and in such sum as the justices shall think fit, conditioned without delay to prosecute such appeal, and to submit to the judgment of the superior court, and to pay such costs as may be awarded by the same; and hereupon, if he be in custody, he will be liberated; but before he is to be entitled to have the case delivered, he is to pay to the justices' clerk his fees for and in respect of the case and recognizances and any other fees to which he is entitled: (see *the 3rd section in the act, post.*)

Refusing a case by justices.—If the justice or justices are of opinion that the application is merely frivolous, but not otherwise, they may by section 4, refuse to state a case, and they are then, on request of the appellant, to sign and deliver to him a certificate of such refusal. They have no power, however, to refuse to state a case where the application is made by the direction of the Attorney-General.

Power of the Queen's Bench to compel statement of case.]—This refusal, however, of the justices to state a case is not conclusive, inasmuch as the appellant may, under the provisions of section 5, apply to the Queen's Bench upon an affidavit of the facts for a rule calling upon them, and also upon the respondent, to show cause why such case should not be stated, and the court may make it absolute or discharge it with or without costs, and then, upon the rule being made absolute, the justices are to state the case accordingly.

Statement of case by the justices.]—'The case itself is to be drawn by the justices whose decision is questioned, and the section requires that they are to set forth the facts and the grounds of their determination. No particular form is prescribed for the case, but the justices will remember that they are to state it in that one of the superior courts which the appellant has indicated in his notice.

The following may be the form of the case :—

FORM OF CASE.

In the Queen's Bench (or Common Pleas,
or Exchequer of Pleas).

In the matter of an information (or
complaint), wherein A. B. was in-
formant or complainant,
and

C. D. was defendant.

This is a case stated for the opinion of the court of (at the instance of the defendant), pursuant to the provisions of "An Act to improve the administration of the law so far as respects summary proceedings before justices of the peace:" (20 & 21 Vict. c. 43.)

At a petty sessions of the peace holden in and for the division of , in the (county) of , on the day of , before us the undersigned , being justices acting in and for the said (county), in the division aforesaid, one C. D. (the above-named defendant) was charged in and by a certain information (or complaint or summons), for that (here state the subject-matter of the information, complaint or summons), and the said parties respectively being then

This notice to the respondent is in fact the first official intimation which he receives of the proceeding.

The notice may be in the following form :—

FORM OF NOTICE TO THE RESPONDENT.

To A. B.

Take notice that I the undersigned C. D. being the defendant in an information (or complaint) laid (or made) against me by you on the day of , and heard before and determined by E. F. and G. H., esquires, two of Her Majesty's justices of the peace, acting in and for the (county) of , at , in the said (county), and upon which information (or complaint) I was convicted (or an order was made upon me), have required the said justices, pursuant to the 20 & 21 Vict. c. 43, entitled "An Act to improve the Administration of the Law so far as respects Summary Proceedings before Justices of the Peace," to state and sign a case setting forth the facts and grounds of their determination upon the hearing of the said information (or complaint), in order that I may take the opinion thereon of the Court of Queen's Bench (or Common Pleas, or Exchequer of Pleas.) And further take notice, that I have duly entered into recognizance with sufficient surety (*as the case may be*) as required by the said statute. And further take notice, that in pursuance of my application to the said justices they have stated and signed a case for the opinion of the said court, a copy of which is annexed hereto.

Dated this day of , 185 .

Yours, &c.,

C. D.

(*Place of abode.*)

This notice together with the copy of the case should be served personally upon the respondent or left for him at his place of abode.

Case to be transmitted to the superior court.—The case itself is, as we have seen, to be transmitted to the court named in the application, *i. e.* lodged in the proper office of that court.

Practice with reference to hearing case, &c.—The case will then stand for argument, and paper books will have to be delivered to the judges by each party

[M. C.]

2 F

according to the particular practice of the superior courts. Briefs should be prepared for counsel. One counsel only on each side is heard, and the respondent begins and has a reply.

Authority of superior court to deal with the case.]

—The 6th section points out the power and authority of the superior court upon the argument of the appeal. It enacts that—

The court to which a case is transmitted under this act, shall hear and determine the question or questions of law arising thereon, and shall thereupon reverse, affirm, or amend the determination in respect of which the case has been stated, or remit the matter to the justice or justices with the opinion of the court thereon, or may make such other order in relation to the matter, and may make such orders as to costs as to the court may seem fit; and all such orders shall be final and conclusive on all parties: provided always, that no justice or justices of the peace who shall state and deliver a case in pursuance of this act shall be liable to any costs in respect or by reason of such appeal against his or their determination.

Sending back case to be amended.】—The very extensive powers conferred upon the court by the foregoing section will enable the judges to do complete justice in every case properly brought before them under the statute. If, however, the case should be so defectively stated as to impose any difficulty in the way of pronouncing a proper judgment, they may, by the 7th section, send it back to be amended, and upon its being returned to the court, judgment may be delivered upon it. It would appear that the only time for taking an objection that the case is imperfectly stated is upon the argument, and that the court will not listen to such an objection until then : (*Christie v. The Guardians of the Poor of Chelsea*, 30 L. T. Rep. 273.)

Duty of Defendant if case decided against him to appear before the justices below.】—If the defendant shall have been in custody under the conviction or order at the time when he enters into the recognizance

to prosecute the appeal without delay, he is then to be liberated; but in that event the recognizance is to be further conditioned for his appearance before the same justice or justices, or, if that is impracticable, before some other justice or justices exercising the same jurisdiction who shall be then sitting, within ten days after the judgment of the superior court shall have been given to abide such judgment, unless the determination appealed against be reversed.

If, therefore, the decision of the court above be for the respondent, in a case in which the appellant at the time of his entering into the recognizance was in custody under the conviction or order, it will be his duty to present himself before the convicting justices, or those who are acting in the same jurisdiction, within ten days after the judgment is given, to be dealt with in pursuance of the decision.

If decision of justices upheld, their power to enforce conviction, &c.]—But after the decision of the court above, if it be in support of their conviction or order, the justices, in relation to whose determination the case has been stated, or any others exercising the same jurisdiction, have the same authority to enforce any conviction or order, which may have been so affirmed or amended or made by the superior court, as the justices who originally decided the case would have had to enforce their determination if the same had not been appealed against, and this free from any liability to any action for enforcing it by reason of any defect: (see sect. 9, *post*.)

Power of the court above may be exercised by a judge at chambers.]—By sect. 8 of this statute the same authority and jurisdiction vested in the superior courts for the opinion of which a case is stated, may (subject to any rules and orders of such court in relation thereto) be exercised by a judge of such court sitting in chambers, and as well in vacation as in term time.

Mode of Enforcing Forfeited Recognizances.—The statute by sect. 13 gives ample powers for the enforcing of forfeited recognizances under the act.

Rules of Court.—It may here be mentioned that, with reference to the practice under this statute, the judges have promulgated two rules, bearing date the 25th of November, 1857, as follows:—

“FIRST. It is ordered that in cases of appeal to a superior court under 20 & 21 Vict. c. 43, the 15th and 16th practice rules of Hilary Term, 1853, so far as the same are applicable, shall be observed.

“SECOND. And in cases when the appeal is to be heard before a judge at chambers, the appellant shall obtain an appointment for such hearing, and shall forthwith give notice thereof to the respondent, and shall, four clear days before the day appointed for the hearing, deliver at the judge's chambers a copy of the case.”

(*For the statute itself see post.*)

LARCENY SUMMARY JURISDICTION.

18 & 19 VICT. CAP. 126.

An Act for diminishing Expense and Delay in the Administration of Criminal Justice in certain Cases. — [14th August, 1855.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

I. *Power to justices at petty sessions to punish persons charged with larceny, &c. summarily*—*If parties accused do not consent, justices to deal with cases as if this act had not passed.*—Where any person is charged before any justices of the peace assembled at such petty sessions as hereinafter provided with having committed simple larceny, and the value of the whole of the property alleged to have been stolen, does not, in the judgment of such justices, exceed five shillings, or with having attempted to commit larceny from the person, or simple larceny, it shall be lawful for such justices to hear and determine the charge in a summary way, and if the person charged shall confess the same, or if such justices, after hearing the whole case for the prosecution and for the defence, shall find the charge to be proved, then it shall be lawful for such justices to convict the person charged, and commit him to the common gaol or house of correction, there to be imprisoned, with or without hard labour, for any period not exceeding three calendar months, and if they find the offence not proved they shall dismiss the charge, and make out and deliver to the person charged a certificate under their hands, stating the fact of such dismissal; and every such conviction and certificate respectively may be in the forms (A.) and (B.) in the schedule to this act, or to the like effect: provided always, that if the person charged do not consent to have the case heard

and determined by such justices, or if it appear to such justices that the offence is one which, owing to a previous conviction of the person charged, is punishable by law with transportation or penal servitude, or if such justices be of opinion that the charge is, from any other circumstances, fit to be made the subject of prosecution by indictment, rather than to be disposed of summarily, such justices shall, instead of summarily adjudicating thereon, deal with the case in all respects as if this act had not been passed: provided also, that if upon the hearing of the charge such justices shall be of opinion that there are circumstances in the case which render it inexpedient to inflict any punishment, they shall have power to dismiss the person charged, without proceeding to a conviction.

II. *Justices to ask the accused whether he consents to the charge being summarily determined.*]—Where the justices before whom any person is charged as aforesaid propose to dispose of the case summarily under the foregoing provisions, one of such justices, after the examinations of all the witnesses for the prosecution have been completed, and before calling upon the person charged for any statement which he may wish to make, shall state to such person the substance of the charge against him, and shall then say to him these words, or words to the like effect: "Do you consent that the charge against you shall be tried by us, or do you desire that it shall be sent for trial by a jury at the sessions or assizes?" (as the case may be); and if the person charged shall consent to the charge being summarily tried and determined as aforesaid, then the justices shall reduce the charge into writing, and read the same to such person, and shall then ask him whether he is guilty or not of such charge; and if such person shall say that he is guilty, the justices shall then proceed to pass such sentence upon him as may by law be passed, subject to the provisions of this act in respect to such offence; but if the person charged shall say that he is not guilty, the justices shall then inquire of such person whether he has any defence to make to such charge, and if he shall state that he has a defence the justices shall hear such defence, and then proceed to dispose of the case summarily.

III. *Persons charged with larceny, &c. may plead guilty before justices in petty sessions, and be sentenced forthwith—Justices to warn the accused that he is not obliged to plead.*]—Where any person is charged before any justices at such

petty sessions as aforesaid with simple larceny (the property alleged to have been stolen exceeding in value five shillings), or stealing from the person, or larceny as a clerk or servant, and the evidence, when the case on the part of the prosecution has been completed, is in the opinion of such justices sufficient to put the person charged on his trial for the offence with which he is charged, such justices, if the case appear to them to be one which may properly be disposed of in a summary way, and may be adequately punished by virtue of the powers of this act, shall reduce the charge into writing, and shall read it to the said person, and shall then ask him whether he is guilty or not of the charge; and if such person shall say that he is guilty such justices shall thereupon cause a plea of guilty to be entered upon the proceedings, and shall convict him of such offence, and commit him to the common gaol or house of correction, there to be imprisoned, with or without hard labour for any term not exceeding six calendar months; and every such conviction may be in the form (C.) in the schedule to this act, or to the like effect: provided always, that the said justices before they ask such person whether he is guilty or not, shall explain to him that he is not obliged to plead or answer before them at all, and that if he do not plead or answer before them he will be committed for trial in the usual course.

IV. Persons accused may have assistance of counsel, &c.]

—In every case of summary proceedings under this act the person accused shall be allowed to make his full answer and defence, and to have all witnesses examined and cross-examined by counsel or attorney.

V. Power to remand persons charged to next petty sessions.]

—Where any person is charged before any justice or justices with any offence mentioned in this act, and in the opinion of such justice or justices the case may be proper to be disposed of by justices in petty sessions under this act, the justice or justices before whom such person is so charged may, if he or they see fit, remand such person for further examination to the next petty sessions, in like manner in all respects as a justice or justices are authorized to remand a party accused under the act passed in the session holden in the eleventh and twelfth years of Her Majesty, chapter forty-two, section twenty-one, or under the Petty Sessions Act (Ireland), 1851, section fourteen.

VI. Forfeited recognizances to be transmitted to the clerk

of the peace.—If any person suffered to go at large upon entering into such recognizance as the justice or justices are authorized under the last-mentioned act to take on the remand of a party accused do not afterwards appear pursuant to such recognizance, then the justices before whom he ought to have appeared shall certify (under the hands of two of them) on the back of the recognizance, to the clerk of the peace of the county or place, the fact of such non-appearance, and such recognizance shall be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance.

VII. *Convictions and other proceedings to be returned to the quarter sessions.*—The justices adjudicating under this act shall transmit the conviction, or a duplicate of a certificate of dismissal, with the written charge, the depositions of the witnesses for the prosecution and for the defence, and the statement of the accused, to the next court of general or quarter sessions for the county or place, there to be kept by the proper officer among the records of the court; and a copy of such conviction, or of such certificate of dismissal, certified by the proper officer of the court, or proved to be a true copy, shall be sufficient evidence to prove a conviction or dismissal for the offence mentioned therein in any legal proceeding whatever.

VIII. *Justices may order restitution of property.*—It shall be lawful for the justices by whom any person is convicted under this act to order restitution of the property stolen, taken, or obtained by false pretences, in those cases in which the court before whom the person convicted would have been tried but for this act may be by law authorized to order restitution.

IX. *Petty sessions to be an open court, and held for petty sessional division.*—Every petty sessions for the purposes of this act shall be an open public court, and shall be the petty sessions holden for a petty sessional division; and a written or printed notice of the days and hours for holding such petty sessions shall be posted or affixed by the clerk to the justices of petty sessions upon the outside of some conspicuous part of the building or place where the same are held.

X. 11 & 12 Vict. c. 43, *not to apply to proceedings under this act.*—The provisions of the act of the session holden

in the eleventh and twelfth years of Her Majesty, chapter forty-three, shall not be construed as applying to any proceeding under this act.

XI. *Effect of conviction.*—Every conviction by justices in petty sessions under this act shall have the same effect as a conviction upon indictment for the same offence would have had, save that no conviction under this act shall be attended with any forfeiture.

XII. *Proceedings under this act a bar to further proceedings.*—Every person who obtains a certificate of dismissal or is convicted under this act shall be released from all further or other criminal proceedings for the same cause.

XIII. *No conviction to be quashed for want of form.*—No conviction, sentence, or proceeding under this act shall be quashed for want of form; and no warrant of commitment upon a conviction shall be held void by reason of any defect therein, if it be therein alleged that the offender has been convicted, and there be a good and valid conviction to sustain the same.

XIV. *Justices may order payment of expenses.*—Where any charge is summarily adjudicated upon under this act, or an offender is under this act convicted by justices in petty sessions upon a plea of "guilty," it shall be lawful for the justices by whom such charge has been adjudicated upon or offender convicted, upon the request of any person who has preferred the charge or appeared to prosecute or give evidence against the person charged, if such justices think fit so to do, to grant a certificate to such person of the amount of the compensation which such justices may deem reasonable for his expenses, trouble, and loss of time therein, subject nevertheless to the regulations made or to be made as hereinafter mentioned; and every such certificate shall, when granted in England, have the effect of an order of court for the payment of the expenses of a prosecution made under the act of the seventh year of King George the Fourth, chapter sixty-four, and the acts amending the same, and when granted in Ireland, shall have the effect of an order of court for the payment of the expenses of a prosecution made under the act of the fifty-fifth year of King George the Third, chapter ninety-one, and the acts amending the same; and the amount mentioned in such certificate shall be paid in like manner as the money mentioned in such order of court;

and all certificates to be granted under this act shall be subject to the like regulations made or to be made in relation thereto as the certificates mentioned in the said act of the seventh year of King George the Fourth to be granted by examining magistrates are or may be subject to under the act of the session holden in the fourteenth and fifteenth years of Her Majesty, chapter fifty-five : provided also, that the amount of the fees payable to the clerks of the magistrates in petty sessions, in respect of any proceeding under this act, and of the fees payable to the clerks of the peace for filing the depositions, conviction, or certificate of dismissal aforesaid, and of all such expenses of apprehending the person charged, and detaining him in custody, and of such other expenses as are now by law payable when incurred before a commitment for trial, may be added to the certificate for compensation aforesaid, and paid in the like manner.

XV. *Town hall, court house, &c. of county, city, or borough may be used for petty sessions held under this act.*—In every city, borough, town, or place in England where any petty sessions shall be holden under this act, the town hall, court house, or other public building therein belonging to any county, city, borough, town, or place, or any court house in such city, borough, town or place provided by the commissioners of Her Majesty's Treasury, under the act of the session holden in the ninth and tenth years of Her Majesty, chapter ninety-five, may be used for the purpose of holding such petty sessions, without any charge for rent or other payment, save and except the reasonable and necessary charges for lighting, warming, and cleaning, when such public building is used for the purpose of holding such courts of petty sessions, and for all other expenses necessarily incidental to the use of the said building for the purposes of the said courts : provided always, that the necessary arrangements shall be made so that the sittings of the said courts of petty sessions shall not interfere with the business of the county, city, borough, town, or place or other business usually transacted in such town hall, court house, or other public building, or any purpose for which any such town hall, court house, or other public building, may be used by virtue of any act of Parliament in that behalf.

XVI. *Any metropolitan police magistrate or stipendiary magistrate may act alone.*—Any one of the magistrates

appointed to act at any of the police courts of the metropolis, and sitting at a police court within the metropolitan police district, or any magistrate appointed to act at the police courts of the Dublin metropolitan district, and sitting at a police court within the said district, or any stipendiary magistrate appointed for any city, town, liberty, borough, or district, and sitting at a police court or other place appointed in that behalf, may, in the case of persons charged before such magistrate, do alone all acts by this act authorized to be done by justices of the peace in petty sessions, and all the provisions of this act referring to justices in petty sessions shall be read and construed as referring also to such magistrate.

XVII. *Nothing to affect provisions of 10 & 11 Vict. c. 82, and 13 & 14 Vict. c. 37.*—Nothing in this act shall affect the provisions of the act of the session holden in the tenth and eleventh years of Her Majesty, chapter eighty-two, "For the more speedy Trial and Punishment of Juvenile Offenders," or of the act of the session holden in the thirteenth and fourteenth years of Her Majesty, chapter thirty-seven, "For the further Extension of Summary Jurisdiction in Cases of Larceny," or of the Summary Jurisdiction (Ireland) Act, 1851; and this act shall not extend to persons punishable under the said acts, so far as regards offences for which such persons may be punished thereunder.

XVIII. *As to compensation to clerks of peace and other officers.*—And whereas the fees and emoluments of clerks of the peace for counties and boroughs, and of other officers of the courts of quarter sessions, in criminal proceedings, may be seriously diminished by the operation and effect of this act, and it is just and reasonable that full compensation for any such loss should be made in respect thereof to such clerks of the peace and other officers appointed before the passing of this act: be it enacted, that immediately after the passing of this act the commissioners of Her Majesty's Treasury shall, upon the application of any such clerk of the peace or other officer, by such means and in such manner as they may think proper, inquire into and ascertain the annual amount, to be computed upon an average of five years immediately preceding the passing of this act, or of such shorter period as such clerk of the peace or other officer shall have been in office, of the fees and emoluments in criminal prosecutions received by such clerk of the peace or other officer; and the said commissioners shall, upon the

like application, also ascertain, in such manner as they may think proper, the total amount of fees and emoluments in criminal prosecutions received by such clerk of the peace or other officer during any year after the passing of this act; and the said commissioners are hereby authorized and empowered, by warrant under their hands, to award to such clerk of the peace or other officer the deficiency, when and so often as the same shall occur, between the last-mentioned amount and the annual average amount so ascertained as aforesaid, and the sum so awarded shall be paid out of any moneys which may be provided by Parliament for that purpose; provided, that in all cases where any such clerk of the peace, by reason of his being paid by salary, under an order made by virtue of the act of the session holden in the fourteenth and fifteenth years of Her Majesty, chapter fifty-five, shall pay such fees and emoluments as aforesaid to the treasurer of the county or borough for which he is clerk of the peace in aid of the county or borough rate, as the case may be, such deficiency, when so ascertained as aforesaid, shall be paid to the treasurer of such county or borough respectively.

XIX. Power to increase salary of chief magistrate to a sum not exceeding 1,500l.—And whereas by section nine of the act of the session holden in the second and third years of Her Majesty, chapter seventy-one, provision is made for payment out of the moneys in the hands of the receiver of the metropolitan police district of such salaries as Her Majesty shall direct to the magistrates of the police courts of the metropolis, the salary to the chief magistrate not being more than one thousand two hundred pounds, and to each of the other magistrates not more than one thousand two hundred pounds: and whereas after the passing of the said act the salary of the chief magistrate was fixed at one thousand two hundred pounds, and the salaries of the other police magistrates at one thousand pounds: and whereas the duties of the said chief and other magistrates have increased, and are subject under this act to be further increased: and whereas the salaries of such other magistrates have, in consequence of such increase of duty, been increased from one thousand pounds to the limit permitted by the said act, and it is expedient to authorize such increase of the salary of the said chief magistrate as hereinafter mentioned: the salary to be paid out of the moneys aforesaid to the said chief magistrate shall be such yearly sum

not exceeding one thousand five hundred pounds, as Her Majesty may direct.

XX. *Provisions of 15 & 16 Vict. c. 73, for payment by salary in lieu of fees to clerks of assize for their duties as associates extended to the whole office of clerk of assize, &c.*]—And whereas by the act of the session holden in the fifteenth and sixteenth years of Her Majesty, chapter seventy-three, certain powers were granted and provisions made for the payment to the several clerks of assize of annual sums or salaries, and for the expenses of their office, in respect of their duties as associates, in lieu of the fees and emoluments appertaining to those duties: and whereas it is expedient that the principle of payment by salary in lieu of fees should be further provided for, and that the clerks of assize should be so paid for the performance of all their other duties: be it therefore enacted, that all fees and emoluments heretofore payable to the clerks of assize for the performance of their duties as clerks of the Crown shall be and they are hereby abolished; and all the powers and provisions made by the before-mentioned act, except as is hereinafter provided, for the payment of clerks of assize by salary in lieu of fees, in respect of their duties as associates, shall be and the same are hereby extended and made applicable to the payment of clerks of assize by salary, and the expenses of their offices, in lieu of fees and emoluments, for the performance of their duties as clerks of the Crown and of all other duties appertaining to the office of clerk of assize: provided always, that the commissioners of Her Majesty's Treasury for the time being shall fix and determine the amount of salary to be allowed to any subordinate officer now employed or who shall hereafter be employed by any clerk of assize, and shall be empowered to order the payment of such salary to the said officers in the first instance, and not through the medium of the clerk of assize: provided also, that the salaries and expenses of the officers of the said clerks of assize for the whole of their duties on the criminal and civil sides of the court shall be paid out of any moneys which may be provided by Parliament for that purpose.

XXI. *So much of 12 Ric. 2, c. 10, and 14 Ric. 2, c. 12, &c. as directs payment of wages to justices and their clerks repealed.*]—And whereas by acts of the twelfth and fourteenth years of King Richard the Second payments are provided for justices of the peace and their clerks in each county, as wages by the day for the time of their sessions,

to be payable by the sheriff, as therein mentioned, and in several counties in England sums are claimed from the sheriffs and paid in respect of such statutory wages, and it is expedient that such payments should be discontinued: be it therefore enacted, that so much of the several acts of the twelfth year of King Richard the Second, chapter ten, and of the fourteenth year of King Richard the Second, chapter twelve, or of any other act now in force as directs or authorizes the payment of wages to justices of the peace and their clerks for the time of their sessions, shall be repealed.

XXII. *In cases of injuries to property, parties aggrieved may receive compensation, though examined as witnesses.*—And whereas it is expedient to amend the law as to witnesses in cases of wilful or malicious injuries to property: be it further enacted, that in all cases where any justice or justices of the peace have or shall hereafter have power to order a sum of money to be forfeited and paid to the party aggrieved, as amends or compensation for any injury to property, real or personal, the right of such party to receive the money so ordered to be paid shall not be affected by such party having been examined as a witness in proof of the offence, any law or statute to the contrary notwithstanding.

XXIII. *Interpretation of terms.*—In the interpretation of this act “county” shall be construed to include riding, parts, liberty, and division of a county; “borough” to include city, county of a city or town, and town corporate; “property” to include everything included under the words “chattel, money, or valuable security,” as used in the act of the session holden in the seventh and eighth years of King George the Fourth, chapter twenty-nine; and in the case of any “valuable security” the value of the share, interest, or deposit to which the security may relate, or of the money due thereon or secured thereby, and remaining unsatisfied, or of the goods or other valuable thing mentioned in the warrant or order, shall be deemed to be the value of such security.

XXIV. *Extent of act.*—This act shall not extend to Scotland.

SCHEDULE.

FORM (A.)

Conviction.

— } Be it remembered, that on the day of , in the
to wit. } year of our Lord , at , in the said [county],
A. B., being charged before us the undersigned, of Her Majesty's
justices of the peace for the said [county], and consenting to our deciding
upon the charge summarily, is convicted before us, for that [he the said
A. B., *do.*, *stating the offence, and the time and place when and where*
committed]; and we adjudge the said *A. B.*, for his said offence, to be
imprisoned in the [House of Correction] at in the said [county],
[and there kept to hard labour] for the space of .

Given under our hands and seals the day and year first above
mentioned, at in the [county] aforesaid.

J. S. [L. S.]

H. M. [L. S.]

FORM (B.)

Certificate of Dismissal.

— } We, of Her Majesty's Justices of the peace for the
to wit. } [county] of , certify, that on the day of ,
in the year of our Lord , at , in the said [county], *A. B.*,
being charged before us, and consenting to our deciding upon the charge
summarily, for that [he the said *A. B.*, *stating the offence charged, and*
the time and place when and where alleged to be committed], we did,
having summarily adjudicated thereon, dismiss the said charge.

Given under our hands and seals, this day of ,
at , in the [county] aforesaid.

J. S. [L. S.]

H. M. [L. S.]

FORM (C.)

Conviction upon a Plea of Guilty.

— } Be it remembered, that on the day of , in the
to wit. } year of our Lord , at , in the said [county],
A. B., being charged before us, the undersigned, of Her Majesty's

justices of the peace for the said [county], for that [he the said *A. B.*, &c., stating the offence, and the time and place when and where committed], and pleading guilty to such charge, he is thereupon convicted before us of the said offence; and we adjudge the said *A. B.*, for his said offence, to be imprisoned in the [House of Correction] at _____, in the said [county], [and there kept to hard labour] for the space of _____.

Given under our hands and seals, the day and year first above mentioned, at _____ in the [county] aforesaid.

J. S. [L. S.]
H. M. [L. S.]

STATEMENT OF A CASE UPON SUMMARY PROCEEDINGS.

20 & 21 VICT. CAP. 43. .

An Act to improve the Administration of the Law so far as respects Summary Proceedings before Justices of the Peace.
—[17th August, 1857.]

WHEREAS it is expedient that provision should be made for obtaining the opinion of a superior court on questions of law which arise in the exercise of summary jurisdiction by justices of the peace: be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. *Interpretation of terms.*—In the interpretation and for the purposes of this act, the following words shall have the meaning hereinafter assigned to them; that is to say,

“Superior Courts of Law” shall for England mean the supreme courts of law at Westminster, and for Ireland the supreme courts of law at Dublin:

“Court of Queen's Bench” shall mean for England the Court of Queen's Bench at Westminster, and for Ireland the Court of Queen's Bench at Dublin.

II. *Justices on application of a party aggrieved to state a case for the opinion of superior court.*—After the hearing and determination by a justice or justices of the peace of any information or complaint which he or they have power to determine in a summary way, by any law now in force or hereafter to be made, either party to the proceeding before the said justice or justices may, if dissatisfied with the said determination as being erroneous in point of law, apply in writing within three days after the same to the said justice or justices, to state and sign a case setting forth the facts and the grounds of such determination, for the opinion thereon of one of the superior courts of law to be named by the party applying; and such party, hereinafter called “the

appellant," shall, within three days after receiving such case, transmit the same to the court named in his application, first giving notice in writing of such appeal, with a copy of the case so stated and signed, to the other party to the proceeding in which the determination was given hereinafter called "the respondent."

III. *Security and notice to be given by the appellant.*]—The appellant at the time of making such application, and before a case shall be stated and delivered to him by the justice or justices, shall in every instance enter into a recognizance, before such justice or justices, or any one or more of them, or any other justice exercising the same jurisdiction, with or without surety or sureties, and in such sum as to the justice or justices shall seem meet, conditioned to prosecute without delay such appeal, and to submit to the judgment of the superior court, and pay such costs as may be awarded by the same; and the appellant shall at the same time, and before he shall be entitled to have the case delivered to him, pay to the clerk to the said justice or justices his fees for and in respect of the case and recognizances, and any other fees to which such clerk shall be entitled, which fees except such as are already provided for by law, shall be according to the schedule to this act annexed marked (A), until the same shall be ascertained, appointed, and regulated in the manner prescribed by the statute eleventh and twelfth Victoria, chapter forty-three, section thirty; and the appellant, if then in custody, shall be liberated upon the recognizance being further conditioned for his appearance before the same justice or justices, or if that is impracticable, before some other justice or justices exercising the same jurisdiction who shall be then sitting, within ten days after the judgment of the superior court shall have been given, to abide such judgment unless the determination appealed against be reversed.

IV. *Justices may refuse a case where they think the application frivolous.*]—If the justice or justices be of opinion that the application is merely frivolous, but not otherwise, he or they may refuse to state a case, and shall, on the request of the appellant, sign and deliver to him a certificate of such refusal; provided, that the justice or justices shall not refuse to state a case where application for that purpose is made to them by or under the direction of Her Majesty's Attorney-General for England or Ireland, as the case may be.

V. *Where the justices refuse, the Court of Queen's Bench may by rule order a case to be stated.*—Where the justice or justices shall refuse to state a case as aforesaid, it shall be lawful for the appellant to apply to the Court of Queen's Bench upon an affidavit of the facts for a rule calling upon such justice or justices, and also upon the respondent, to show cause why such case should not be stated; and the said court may make the same absolute or discharge it, with or without payment of costs, as to the court shall seem meet, and the justice or justices, upon being served with such rule absolute, shall state a case accordingly, upon the appellant entering into such recognizance as is hereinbefore provided.

VI. *Superior court to determine the questions on the case—Its decisions to be final.*—The court to which a case is transmitted under this act shall hear and determine the question or questions of law arising thereon, and shall thereupon reverse, affirm, or amend the determination in respect of which the case has been stated, or remit the matter to the justice or justices, with the opinion of the court thereon, or may make such other order in relation to the matter, and may make such orders as to costs, as to the court may seem fit; and all such orders shall be final and conclusive on all parties; provided always, that no justice or justices of the peace who shall state and deliver a case in pursuance of this act shall be liable to any costs in respect or by reason of such appeal against his or their determination.

VII. *Case may be sent back for amendment.*—The court for the opinion of which a case is stated shall have power, if they think fit, to cause the case to be sent back for amendment, and thereupon the same shall be amended accordingly, and judgment shall be delivered after it shall have been amended.

VIII. *Powers of superior court may be exercised by a judge at chambers.*—The authority and jurisdiction hereby vested in a superior court for the opinion of which a case is stated under this act shall and may (subject to any rules and orders of such court in relation thereto) be exercised by a judge of such court sitting in chambers, and as well in vacation as in term time.

IX. *After the decision of superior court, justices may issue warrants.*—After the decision of the superior court in relation to any case stated for their opinion under this act, the

justice or justices in relation to whose determination the case has been stated, or any other justice or justices of the peace exercising the same jurisdiction, shall have the same authority to enforce any conviction or order, which may have been affirmed, amended, or made by such superior court, as the justice or justices who originally decided the case would have had to enforce his or their determination if the same had not been appealed against; and no action or proceeding whatsoever shall be commenced or had against the justice or justices for enforcing such conviction or order, by reason of any defect in the same respectively.

X. *Certiorari not to be required for proceedings under this act.*—No writ of certiorari or other writ shall be required for the removal of any conviction, order, or other determination in relation to which a case is stated under this act, or otherwise, for obtaining the judgment or determination of the superior court on such case under this act.

XI. *Superior courts may make rules for proceedings.*—The superior courts of law may from time to time, and as often as they shall see occasion, make and alter rules and orders to regulate the practice and proceedings in reference to the cases hereinbefore mentioned.

XII. *"Justices" to include a stipendiary magistrate.*—The words "justice or justices" in this act shall include a magistrate of the police courts of the metropolis and any stipendiary magistrate.

XIII. *Recognizances how to be enforced—2 & 3 Vict. c. 71, s. 45.*—In all cases where the conditions, or any of them, in the said recognizance mentioned, shall not have been complied with, the justice or justices who shall have taken the same, or any other justice or justices, shall certify upon the back of the recognizance in what respect the conditions thereof have not been observed, and transmit the same to the clerk of the peace of the county, riding, division, liberty, city, borough, or place within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances forfeited at quarter sessions may now by law be enforced, and such certificate shall be deemed sufficient *prima facie* evidence of the said recognizance having been forfeited: provided, that where any such recognizances shall have been taken in England before a magistrate of the police courts of

the metropolis, or by any stipendiary magistrate, all sums of money in which any person or persons shall be therein bound may, if the said magistrate shall think fit, be levied, upon such recognizance being forfeited, and on nonpayment thereof, together with the costs of the proceedings to enforce such payment, in the same manner as a police magistrate of the metropolis is now empowered to recover any penalty, forfeiture, or sum of money, by section forty-five of an act passed in the second and third years of the reign of Her present Majesty, intituled "An Act for regulating the Police Courts in the Metropolis," and that all and every the provisions and enactments contained in the said section forty-five shall extend to and be applicable to this act, in as ample a manner as if they had been herein re-enacted and made part of the same.

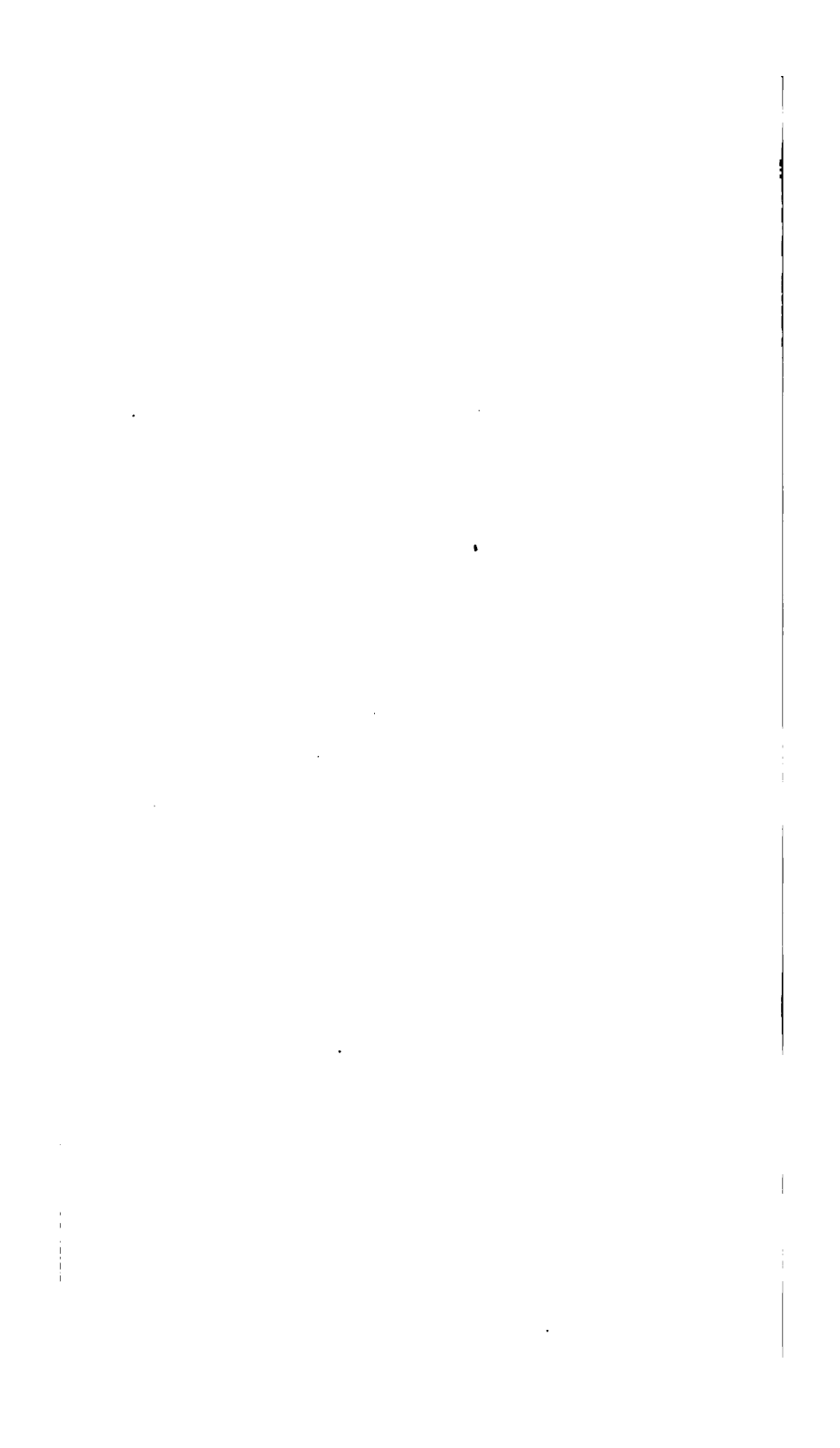
XIV. *Appellants under this act not allowed to appeal to quarter sessions.*—Any person who shall appeal under the provisions of this act against any determination of a justice or justices of the peace from which he is by law entitled to appeal to the quarter sessions shall be taken to have abandoned such last-mentioned right of appeal, finally and conclusively, and to all intents and purposes.

XV. *Extent of act.*—This act shall not extend to Scotland.

SCHEDULE (A.)

FEES to be taken by CLERKS to JUSTICES.

For drawing case and copy, where the case does not exceed five folios of ninety words each	s.	d.
10	0	
Where the case exceeds five folios, then for every additional folio	1	0
For the recognizance to be taken in pursuance of the act ...	5	0
For every enlargement or renewal thereof	2	6
For certificate of refusal of case	2	0



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[M. C.]

2 H

appellant," shall, within three days after receiving such case, transmit the same to the court named in his application, first giving notice in writing of such appeal, with a copy of the case so stated and signed, to the other party to the proceeding in which the determination was given hereinafter called "the respondent."

III. *Security and notice to be given by the appellant.*—The appellant at the time of making such application, and before a case shall be stated and delivered to him by the justice or justices, shall in every instance enter into a recognizance, before such justice or justices, or any one or more of them, or any other justice exercising the same jurisdiction, with or without surety or sureties, and in such sum as to the justice or justices shall seem meet, conditioned to prosecute without delay such appeal, and to submit to the judgment of the superior court, and pay such costs as may be awarded by the same; and the appellant shall at the same time, and before he shall be entitled to have the case delivered to him, pay to the clerk to the said justice or justices his fees for and in respect of the case and recognizances, and any other fees to which such clerk shall be entitled, which fees except such as are already provided for by law, shall be according to the schedule to this act annexed marked (A), until the same shall be ascertained, appointed, and regulated in the manner prescribed by the statute eleventh and twelfth Victoria, chapter forty-three, section thirty; and the appellant, if then in custody, shall be liberated upon the recognizance being further conditioned for his appearance before the same justice or justices, or if that is impracticable, before some other justice or justices exercising the same jurisdiction who shall be then sitting, within ten days after the judgment of the superior court shall have been given, to abide such judgment unless the determination appealed against be reversed.

IV. *Justices may refuse a case where they think the application frivolous.*—If the justice or justices be of opinion that the application is merely frivolous, but not otherwise, he or they may refuse to state a case, and shall, on the request of the appellant, sign and deliver to him a certificate of such refusal; provided, that the justice or justices shall not refuse to state a case where application for that purpose is made to them by or under the direction of Her Majesty's Attorney-General for England or Ireland, as the case may be.

V. *Where the justices refuse, the Court of Queen's Bench may by rule order a case to be stated.*]—Where the justice or justices shall refuse to state a case as aforesaid, it shall be lawful for the appellant to apply to the Court of Queen's Bench upon an affidavit of the facts for a rule calling upon such justice or justices, and also upon the respondent, to show cause why such case should not be stated; and the said court may make the same absolute or discharge it, with or without payment of costs, as to the court shall seem meet, and the justice or justices, upon being served with such rule absolute, shall state a case accordingly, upon the appellant entering into such recognizance as is hereinbefore provided.

VI. *Superior court to determine the questions on the case—Its decisions to be final.*]—The court to which a case is transmitted under this act shall hear and determine the question or questions of law arising thereon, and shall thereupon reverse, affirm, or amend the determination in respect of which the case has been stated, or remit the matter to the justice or justices, with the opinion of the court thereon, or may make such other order in relation to the matter, and may make such orders as to costs, as to the court may seem fit; and all such orders shall be final and conclusive on all parties; provided always, that no justice or justices of the peace who shall state and deliver a case in pursuance of this act shall be liable to any costs in respect or by reason of such appeal against his or their determination.

VII. *Case may be sent back for amendment.*]—The court for the opinion of which a case is stated shall have power, if they think fit, to cause the case to be sent back for amendment, and thereupon the same shall be amended accordingly, and judgment shall be delivered after it shall have been amended.

VIII. *Powers of superior court may be exercised by a judge at chambers.*]—The authority and jurisdiction hereby vested in a superior court for the opinion of which a case is stated under this act shall and may (subject to any rules and orders of such court in relation thereto) be exercised by a judge of such court sitting in chambers, and as well in vacation as in term time.

IX. *After the decision of superior court, justices may issue warrants.*]—After the decision of the superior court in relation to any case stated for their opinion under this act, the

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BOUND BY
RICHMOND & SON
7, SKINNER STREET
LONDON. E.C.

